

## Appointment

---

**From:** Wilwerding, Joseph [Wilwerding.Joseph@epa.gov]  
**Sent:** 3/16/2020 8:42:48 PM  
**To:** Wilwerding, Joseph [Wilwerding.Joseph@epa.gov]; ECAD Directors and Deputies-Designees [ECAD\_Directors\_and\_Deputies-Designees@epa.gov]; Bodine, Susan [bodine.susan@epa.gov]; Starfield, Lawrence [Starfield.Lawrence@epa.gov]; Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]; Koslow, Karin [Koslow.Karin@epa.gov]; Hindin, David [Hindin.David@epa.gov]; Werner, Jacqueline [Werner.Jacqueline@epa.gov]; Dombrowski, John [Dombrowski.John@epa.gov]; Johnson, Kathleen [Johnson.Kathleen@epa.gov]

**Subject:** ECAD Director Coronavirus Update Call: **Ex. 6 Personal Privacy (PP)** (Dial-in Number)  
**Attachments:** Untitled Attachment  
**Location:** Conference call

**Start:** 3/18/2020 7:00:00 PM  
**End:** 3/18/2020 7:30:00 PM  
**Show Time As:** Busy

**Recurrence:** Weekly  
every Wednesday from 1:00 PM to 1:30 PM

Expanding this call to include OECA Leadership on the recommendation of the Exec Board.

**Ex. 6 Personal Privacy (PP)** (Dial-in Number)

**Ex. 6 Personal Privacy (PP)**

## Appointment

---

**From:** Wilwerding, Joseph [Wilwerding.Joseph@epa.gov]  
**Sent:** 3/16/2020 8:42:48 PM  
**To:** Wilwerding, Joseph [Wilwerding.Joseph@epa.gov]; ECAD Directors and Deputies-Designees [ECAD\_Directors\_and\_Deputies-Designees@epa.gov]; Bodine, Susan [bodine.susan@epa.gov]; Starfield, Lawrence [Starfield.Lawrence@epa.gov]; Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]; Koslow, Karin [Koslow.Karin@epa.gov]; Hindin, David [Hindin.David@epa.gov]; Werner, Jacqueline [Werner.Jacqueline@epa.gov]; Dombrowski, John [Dombrowski.John@epa.gov]; Johnson, Kathleen [Johnson.Kathleen@epa.gov]  
**CC:** Kowalski, Edward [Kowalski.Edward@epa.gov]; Lubbe, Wendy [Lubbe.Wendy@epa.gov]  
**Subject:** ECAD Director Coronavirus Update Call: [Ex. 6 Personal Privacy (PP)] # (Dial-in Number)  
**Attachments:** Untitled Attachment  
**Location:** Conference call  
  
**Start:** 3/18/2020 7:00:00 PM  
**End:** 3/18/2020 7:30:00 PM  
**Show Time As:** Busy

**Recurrence:** Weekly  
every Wednesday from 1:00 PM to 1:30 PM

Expanding this call to include OECA Leadership on the recommendation of the Exec Board.

[Ex. 6 Personal Privacy (PP)] (Dial-in Number)

[Ex. 6 Personal Privacy (PP)]

## Appointment

---

**From:** Wilwerding, Joseph [Wilwerding.Joseph@epa.gov]  
**Sent:** 3/16/2020 8:42:48 PM  
**To:** Wilwerding, Joseph [Wilwerding.Joseph@epa.gov]; ECAD Directors and Deputies-Designees [ECAD\_Directors\_and\_Deputies-Designees@epa.gov]; Bodine, Susan [bodine.susan@epa.gov]; Starfield, Lawrence [Starfield.Lawrence@epa.gov]; Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]; Koslow, Karin [Koslow.Karin@epa.gov]; Hindin, David [Hindin.David@epa.gov]; Werner, Jacqueline [Werner.Jacqueline@epa.gov]; Dombrowski, John [Dombrowski.John@epa.gov]; Johnson, Kathleen [Johnson.Kathleen@epa.gov]  
**Subject:** ECAD Director Coronavirus Update Call: Ex. 6 Personal Privacy (PP) (Dial-in Number)  
**Location:** Conference call  
**Start:** 3/18/2020 7:00:00 PM  
**End:** 3/18/2020 7:30:00 PM  
**Show Time As:** Tentative

**Recurrence:** Weekly  
every Wednesday from 1:00 PM to 1:30 PM

Expanding this call to include OECA Leadership on the recommendation of the Exec Board.

Ex. 6 Personal Privacy (PP) (Dial-in Number)

Ex. 6 Personal Privacy (PP)

## Appointment

---

**From:** Loving, Shanita [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=439CE9C2D2104080A1B5908D3402BF20-LOVING, SHANITA]  
**Sent:** 3/25/2020 2:52:10 PM  
**To:** Bodine, Susan [bodine.susan@epa.gov]; Starfield, Lawrence [Starfield.Lawrence@epa.gov]; Irving, John [Irving.John@epa.gov]; Johnson, Kathleen [Johnson.Kathleen@epa.gov]; Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]; Koslow, Karin [Koslow.Karin@epa.gov]; Fogarty, Johnpc [Fogarty.Johnpc@epa.gov]; Holmes, Carol [Holmes.Carol@epa.gov]; Amy Porter (Porter.Amy@epa.gov) [Porter.Amy@epa.gov]  
**Subject:** Final discussion with OCE on Temporary Enf Policy  
**Location:** CALL ONLY! Call-in Number: **Ex. 6 Personal Privacy (PP)**  
**Start:** 3/25/2020 3:30:00 PM  
**End:** 3/25/2020 4:00:00 PM  
**Show Time As:** Busy



## Appointment

---

**From:** Wilwerding, Joseph [Wilwerding.Joseph@epa.gov]  
**Sent:** 3/16/2020 8:42:48 PM  
**To:** Wilwerding, Joseph [Wilwerding.Joseph@epa.gov]; Irving, John [Irving.John@epa.gov]; ECAD Directors and Deputies-Designees [ECAD\_Directors\_and\_Deputies-Designees@epa.gov]; Bodine, Susan [bodine.susan@epa.gov]; Starfield, Lawrence [Starfield.Lawrence@epa.gov]; Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]; Koslow, Karin [Koslow.Karin@epa.gov]; Hindin, David [Hindin.David@epa.gov]; Werner, Jacqueline [Werner.Jacqueline@epa.gov]; Dombrowski, John [Dombrowski.John@epa.gov]; Mackey, Cyndy [Mackey.Cyndy@epa.gov]; Leff, Karin [Leff.Karin@epa.gov]; Johnson, Kathleen [Johnson.Kathleen@epa.gov]; Regional Counsels and Deputies [Regional\_Counsels\_and\_Deputies@epa.gov]  
**CC:** Dean, Abigail [Dean.Abigail@epa.gov]; Sutin, Elyana [Sutin.Elyana@epa.gov]; Armstrong, Joan [Armstrong.Joan@epa.gov]; Gardner, Allison [Gardner.Allison@epa.gov]; Kowalski, Edward [Kowalski.Edward@epa.gov]; Rodrigues, Cecil [rodrigues.cecil@epa.gov]; Mastro, Donna [Mastro.Donna@epa.gov]; Kemker, Carol [Kemker.Carol@epa.gov]; Quast, Sylvia [Quast.Sylvia@epa.gov]; LaPosta, Dore [LaPosta.Dore@epa.gov]; Davies, Lauris [Davies.Lauris@epa.gov]; Lubbe, Wendy [Lubbe.Wendy@epa.gov]; Chow, James [chow.james@epa.gov]; Nelson, Leverett [nelson.leverett@epa.gov]; Simon, Paul [Simon.Paul@epa.gov]; Melvin, Karen [Melvin.Karen@epa.gov]; Meinhardt, Danielle [meinhardt.danielle@epa.gov]; Guerrero, Carmen [guerrero.carmen@epa.gov]; Busterud, Gretchen [Busterud.Gretchen@epa.gov]; Canzler, Erica [Canzler.Erica@epa.gov]; Humphrey, Leslie [Humphrey.Leslie@epa.gov]; Welton, Patricia [Welton.Patricia@epa.gov]; Marshalonis, Dino [Marshalonis.Dino@epa.gov]; Anderson, Julie [Anderson.Julie@epa.gov]; Russo, Rebecca [Russo.Rebecca@epa.gov]; Skelley, Dana [Skelley.Dana@epa.gov]; Gilley, Anne [Gilley.anne@epa.gov]; Miller, Amy [Miller.Amy@epa.gov]; Anderson, Andrew [anderson.andrew@epa.gov]; Jones, Joel E. [Jones.Joel@epa.gov]; Jerison, Joanna [Jerison.Joanna@epa.gov]

**Subject:** ED/RC COVID-19 Update Call: Ex. 6 Personal Privacy (PP) (Dial-in Number)  
**Attachments:** Untitled Attachment; ED/RC COVID-19 Update Call: Ex. 6 Personal Privacy (PP) (Dial-in Number)  
**Location:** Conference call

**Start:** 3/18/2020 7:00:00 PM  
**End:** 3/18/2020 8:00:00 PM  
**Show Time As:** Tentative

**Recurrence:** Weekly  
every Wednesday from 1:00 PM to 2:00 PM

All, this is a weekly call to address enforcement responses and policies related to COVID-19. Please join us today as we discuss who needs to participate and how this call will be used in the coming weeks. Please see the distribution list for current invitees.

Ex. 6 Personal Privacy (PP) (Dial-in Number)

Ex. 6 Personal Privacy (PP)

**Organizer:** Wilwerding, Joseph[Wilwerding.Joseph@epa.gov]  
**Location:** Conference call  
**Importance:** Normal  
**Subject:** ED/RC COVID-19 Update Call: **Ex. 6 Personal Privacy (PP)** # (Dial-in Number)  
**Start Time:** Wed 3/18/2020 7:00:00 PM (UTC)  
**End Time:** Wed 3/18/2020 8:00:00 PM (UTC)  
**Required Attendees:** Hindin, David; Irving, John; Koslow, Karin; Starfield, Lawrence; ECAD Directors and Deputies-Designees; Bodine, Susan; Kelley, Rosemarie; Werner, Jacqueline; Dombrowski, John; Mackey, Cyndy; Leff, Karin; Johnson, Kathleen; Regional Counsels and Deputies  
**Optional Attendees:** Schefski, Kenneth; Barnett, Cheryl; Jones, Joel E.; Harris, Michael; Lammie, Benjamin; Meinhardt, Danielle; Castanon, Lisa; Lamberth, Larry; Dean, Abigail; Sutin, Elyana; Armstrong, Joan; Gardner, Allison; Kowalski, Edward; Rodrigues, Cecil; Mastro, Donna; Kemker, Carol; Quast, Sylvia; LaPosta, Dore; Davies, Lauris; Lubbe, Wendy; Chow, James

All, this is a weekly call to address enforcement responses and policies related to COVID-19. Please join us today as we discuss who needs to participate and how this call will be used in the coming weeks. Please see the distribution list for current invitees.

**Agenda for today's call:**

**Ex. 5 Deliberative Process (DP)**

**Ex. 6 Personal Privacy (PP)** (Dial-in Number)

**Ex. 6 Personal Privacy (PP)**

## Appointment

---

**From:** Loving, Shanita [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=439CE9C2D2104080A1B5908D3402BF20-LOVING, SHANITA]  
**Sent:** 3/19/2020 3:59:46 PM  
**To:** Bodine, Susan [bodine.susan@epa.gov]; Wright, Peter [wright.peter@epa.gov]; Bolen, Brittany [bolen.brittany@epa.gov]; Idsal, Anne [idsal.anne@epa.gov]; Dunn, Alexandra [dunn.alexandra@epa.gov]; Ross, David P [ross.davidp@epa.gov]; Sopkin, Gregory [sopkin.gregory@epa.gov]; Leopold, Matt (OGC) [Leopold.Matt@epa.gov]; Cook, Steven [cook.steven@epa.gov]  
**CC:** Benevento, Douglas [benevento.douglas@epa.gov]; Dunlap, David [dunlap.david@epa.gov]; McIntosh, Chad [mcintosh.chad@epa.gov]  
**Subject:** Call Re: Covid-19 and Request for Flexibility  
**Location:** Call-in Number: [Ex. 6 Personal Privacy (PP)] Code: [Ex. 6 Personal Privacy (PP)]  
**Start:** 3/20/2020 7:30:00 PM  
**End:** 3/20/2020 8:15:00 PM  
**Show Time As:** Busy

## Appointment

---

**From:** Loving, Shanita [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=439CE9C2D2104080A1B5908D3402BF20-LOVING, SHANITA]  
**Sent:** 3/19/2020 3:59:46 PM  
**To:** Bodine, Susan [bodine.susan@epa.gov]; Wright, Peter [wright.peter@epa.gov]; Bolen, Brittany [bolen.brittany@epa.gov]; Idsal, Anne [idsal.anne@epa.gov]; Dunn, Alexandra [dunn.alexandra@epa.gov]; Ross, David P [ross.davidp@epa.gov]; Sopkin, Gregory [sopkin.gregory@epa.gov]; Leopold, Matt (OGC) [Leopold.Matt@epa.gov]; Cook, Steven [cook.steven@epa.gov]  
**CC:** Benevento, Douglas [benevento.douglas@epa.gov]  
**Subject:** Call Re: Covid-19 and Request for Flexibility  
**Location:** Call-in Number: Ex. 6 Personal Privacy (PP)  
**Start:** 3/20/2020 7:30:00 PM  
**End:** 3/20/2020 8:15:00 PM  
**Show Time As:** Busy

**Cc:** Starfield, Lawrence[Starfield.Lawrence@epa.gov]; Irving, John[Irving.John@epa.gov]; Hindin, David[Hindin.David@epa.gov]; Kelley, Rosemarie[Kelley.Rosemarie@epa.gov]; Barnet, Henry[Barnet.Henry@epa.gov]  
**To:** Badalamente, Mark[Badalamente.Mark@epa.gov]  
**From:** bodine.susan@epa.gov[bodine.susan@epa.gov]  
**Sent:** Sat 3/14/2020 2:41:17 PM (UTC)  
**Subject:** Re: Travel

Doug will be on a call today

Sent from my iPhone

> On Mar 14, 2020, at 9:16 AM, Badalamente, Mark <Badalamente.Mark@epa.gov> wrote:  
>  
> You've probably seen the news that DOD has placed a halt on all domestic travel. If there is an Agency CoVid19 call this weekend (TDB), I'll ask if we are considering the same or if a broader travel ban was discussed on the inter-agency all, which I think is still happening today or tomorrow.  
>  
> Sent from my iPhone



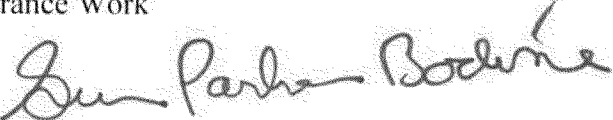
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

JUL 11 2019

ASSISTANT ADMINISTRATOR  
FOR ENFORCEMENT AND  
COMPLIANCE ASSURANCE

**MEMORANDUM**

**SUBJECT:** Enhancing Effective Partnerships Between the EPA and the States in Civil Enforcement and Compliance Assurance Work

**FROM:** Susan Parker Bodine 

**TO:** Regional Administrators

This policy sets out expectations and procedures for enhancing effective partnerships in civil enforcement and compliance assurance work between the U.S. Environmental Protection Agency and states that are authorized, delegated, or approved to implement federal environmental programs (hereinafter, "states").<sup>1</sup>

The first part of this policy articulates expectations and best practices for periodic joint work planning and effective communication between EPA regions and states to further the goal of shared accountability for the consistent enforcement of the law. The second part articulates the primary role of the states in implementing authorized programs, while acknowledging the EPA's responsibilities to the President, the Congress, and the public to take direct action when a state lacks the economic or technical capability or the will to take timely and appropriate action. The second part also describes those circumstances that may warrant direct federal action. The third part sets out the process by which issues that may arise under this policy will be elevated.

**Background**

The EPA aims to enhance its partnerships with its state, local, and tribal co-regulators by more effectively carrying out our shared responsibilities under environmental laws. Administrator Wheeler issued a memorandum on October 30, 2018, that complemented and modernized earlier EPA statements on EPA and state roles.<sup>2</sup> That memorandum outlined four key principles relevant to the enforcement of federal environmental laws: (1) general deference to the states in state-implemented programs, consistent with the

---

<sup>1</sup> Although this policy is focused on the EPA's work with states that implement federal programs, the EPA will also strive to follow these planning and communication practices when working with federally-recognized Indian tribes, territories, and local governments that implement federal programs.

<sup>2</sup> See Memorandum from Andrew R. Wheeler, Acting Administrator, Principles and Best Practices for Oversight of Federal Environmental Programs Implemented by States and Tribes (Oct. 30, 2018). See also Memorandum from William D. Ruckelshaus, Administrator, EPA Policy on Oversight of Delegated Environmental Programs (Apr. 4, 1984).

EPA's oversight responsibilities; (2) effective communication between the EPA and the states; (3) clear standards of review and predictable processes; and (4) a clear process for elevating issues.<sup>3</sup>

In a complementary process, the EPA and the Environmental Council of the States ("ECOS") convened an EPA-ECOS Compliance Assurance Workgroup in September 2017 to develop practical procedures to advance cooperation between EPA and state enforcement offices.<sup>4</sup> The EPA-ECOS Workgroup published a consensus-based series of recommendations in August 2018 that touched on all four principles in the 2018 Wheeler memorandum.

The EPA also issued interim guidance on January 22, 2018, related to enhancing planning and communication between EPA regions and the states.<sup>5</sup> The EPA signaled that it would update and finalize that guidance based on input from EPA regions, states, and the EPA-ECOS Workgroup. The EPA published a notice and request for public comments on a draft of this final guidance on May 13, 2019.<sup>6</sup>

After considering the 2018 Wheeler memorandum, the EPA-ECOS Workgroup recommendations, and comments received on the interim and draft final policies, I am now issuing this final enhancing effective partnerships policy.<sup>7</sup>

## **I. PERIODIC JOINT WORK PLANNING**

Cooperative, periodic, and early joint planning and regular communication between the EPA and states is essential to promote enhanced, shared accountability between federal and state enforcement authorities. A "no surprises" principle is the foundation of joint work planning and will minimize the misunderstandings that can be caused by the lack of regular, bilateral communication. With increased EPA cooperation and transparency, the EPA expects the states to respond in kind. A break-down in two-way communication between a state and the EPA should be elevated to senior management in both organizations. The overall goal of joint planning is the sharing of enforcement responsibilities with a clear agreement on EPA and state roles in individual inspections and formal enforcement actions. Such agreements cannot be reached

---

<sup>3</sup> See Wheeler at 2.

<sup>4</sup> Workgroup members included geographically- and politically-diverse state director-level representatives from Alaska, California, Missouri, New Jersey, Ohio, and Tennessee, and Deputy Regional Administrator-level representatives from EPA Regions 1, 2, 3, 7, and 8. The Workgroup was co-chaired by the Director of the Nebraska Department of Environmental Quality and the OECA Deputy Assistant Administrator. See <https://www.ecos.org/documents/final-report-of-the-ecos-epa-compliance-assurance-workgroup>.

<sup>5</sup> See Memorandum from Susan Parker Bodine, Assistant Administrator for the Office of Enforcement and Compliance Assurance, Interim OECA Guidance on Enhancing Regional-State Planning and Communication on Compliance Assurance Work in Authorized States (Jan. 22, 2018).

<sup>6</sup> See 84 Fed. Reg. 20,882 (May 13, 2019).

<sup>7</sup> This policy withdraws and replaces the January 22, 2018, Bodine interim guidance memorandum. This policy is intended for use by EPA personnel and does not create any right or benefit, substantive or procedural, enforceable by law by a party against the United States, its agencies, its officers, or any person. This policy is not intended to supersede any statutory or regulatory requirements or agency policy. Any inconsistencies between this policy and any statute or regulation should be resolved in favor of the relevant statutory or regulatory requirements. The EPA may revise, replace, or discontinue this policy at any time.

if the EPA or a state is unaware of the actions of the other. Where agreement cannot be achieved, the matter should be elevated within the EPA and the state for resolution under the issue-elevation procedures in Section III. Periodic joint work planning should at a minimum include strategic planning, joint inspection planning, and joint formal enforcement planning.<sup>8</sup>

#### **A. Joint planning participants**

Joint work planning should take place at various levels within the EPA and state agencies. The timing, method, and preparation for planning communications will vary based on the EPA-state relationship, and the level of the participants will vary as appropriate to the items to be discussed. In this policy, “career managers” means the employees with day-to-day responsibility for an enforcement and compliance program (e.g., air enforcement managers). “Senior management” means the employees with responsibility for multiple statutory programs, not necessarily limited to enforcement programs (e.g., Regional Enforcement and Compliance Assurance Division Directors and Deputy Regional Administrators).

As a practical matter, most discussions of work-sharing, inspections, and enforcement actions are likely to occur between EPA regional and state career managers. Effective collaboration and shared accountability require appropriate communication up and down the respective management chains within the EPA and the states. This does not mean that every enforcement issue must be elevated to the highest possible level within an organization. It does mean that the more significant the issue, the more likely it will be appropriate to brief more senior managers.

In addition to these day-to-day discussions, the senior management in each region should meet—preferably in person—with their counterparts in a state, including, as appropriate, the EPA Regional Administrator and Secretaries or Commissioners of state environmental agencies. The frequency of these meetings and the participants should be appropriate to the needs and styles of the specific region-state relationship. These meetings should include a jointly-prepared agenda and supporting materials circulated sufficiently in advance to allow for full preparation and participation.

#### **B. Strategic planning**

Joint planning should include a strategic element that goes beyond planning for individual inspections and enforcement actions. Strategic planning should include a discussion of: (1) the environmental compliance problems and needs in the state; (2) national, regional, and state compliance assurance priorities; (3) emerging issues; and (4) how the combined resources of the EPA and the state could be used to address these needs. Strategic planning should also include a discussion of how the EPA and the state may mutually build their respective capabilities to conduct inspections and develop and prosecute cases. Strategic planning meetings should include senior management.

#### **C. Joint inspection planning**

EPA regions and the states should work together to identify which inspections the EPA or a state will perform, consistent with the guidelines in Section II. Inspection planning will avoid duplicate efforts, improve efficiency, reduce unnecessary burdens on the regulated community, and could provide EPA regions and states with more flexibility in setting and adjusting inspection targets and Compliance

---

<sup>8</sup> This periodic joint work planning process is not appropriate for those emergency actions described in Section II(3).



Monitoring Strategies. Cooperative inspection planning also helps the EPA meet its oversight responsibilities to ensure compliance with federal statutes. The following best practices should be followed in the joint inspection planning process.

- 1) EPA regions and states should communicate as they develop their separate inspection priorities and commitments and should work together as appropriate on joint inspection priorities and commitments.
  - a) EPA regions and the states should avoid duplicative or overlapping inspections that would lead them to inspect the same facility for the same regulatory requirements within the same twelve-month period. Multiple inspections by the EPA and the states may, however, be appropriate for complex sites where the inspections will focus on different regulatory requirements or where the EPA and a state agree that multiple inspections serve a valuable purpose.
  - b) EPA regions and the states should exchange and discuss their targeting rationales and draft inspection plans as early as possible. This should be more than a simple exchange of planned inspection lists for informational purposes. Instead, this discussion should create a shared understanding between EPA regions and the states of the purpose and objectives of their respective inspections.
  - c) EPA regions should provide states with advance notice of inspections, especially because inspection plans tend to be dynamic and it might have been some time since the planned inspection was discussed. This type of coordination requires EPA regions and states to reach agreements regarding confidentiality and whether or when facilities are to be provided notice of inspections.
- 2) EPA regions and states should invite each other to participate in inspections where there is value in both entities participating.
- 3) The inspection planning process should make the best use of both EPA and state resources and expertise. EPA regions and states should discuss how they will use their combined resources to meet national inspection coverage expectations under applicable Compliance Monitoring Strategies and statutory requirements and should consider the use of alternative compliance monitoring strategies where appropriate.
- 4) Consistent with the “no surprises” principle, in investigations where the EPA has the lead, EPA regions should share information requests and inspection reports for authorized programs with the state concurrently with sending them to the recipient.

#### **D. Joint enforcement planning**

Joint enforcement planning should identify which individual or classes of enforcement actions the EPA or a state will initiate, consistent with the guidance in Section II. The following best practices should be followed in the joint enforcement planning process.

- 1) The EPA should communicate with states when the EPA believes that an enforcement action is warranted in a state. The communication should include a review of the EPA’s observations and findings from inspections and other case development techniques. The communication should include a discussion whether the enforcement action should be federal, state, or joint, and the type of action to be

taken. In these communications, the EPA should expect the state to respond quickly and clearly so that a federal, state, or joint enforcement action may proceed in a timely way, although the state's response does not need to be in writing.<sup>9</sup>

- 2) Where a state proposes to take the lead to address noncompliance identified by the EPA, the state and the EPA should discuss state-specific authorities and procedures and how the claims made and relief sought in an enforcement action taken by a state will—as appropriate for the circumstances of the violation—remedy the noncompliance and deter similar violations, including civil penalties as appropriate.
- 3) Where the EPA is taking an enforcement action in a state, the EPA should notify the state before notifying the facility.
- 4) Joint enforcement planning should include regular, bilateral updates on the progress and outcomes of selected actions (e.g., National Compliance Initiative actions, new areas of state implementation, “priority state assists,”<sup>10</sup> or important cases discussed during joint work planning).
- 5) The EPA and the states should remain mindful of the requirements of confidentiality in enforcement actions—breaches of confidentiality will diminish the ability to work in an effective partnership. It may not be possible for the EPA to share details of a planned enforcement action where a confidentiality agreement with the state is not executed and where differences in freedom of information and evidentiary rules would make case-sensitive information vulnerable to release.
- 6) If the need arises for additional enforcement or compliance actions after making joint planning decisions in an action, the EPA and the state should discuss the appropriate lead agency for these additional actions.<sup>11</sup>
- 7) Ongoing cooperation and assistance between the EPA and the states is encouraged.

---

<sup>9</sup> If a region does not hear from a state, the EPA should document when it communicated with the state and the reasonable length of time the state had to respond.

<sup>10</sup> See Memorandum from Susan Parker Bodine, Assistant Administrator for the Office of Enforcement and Compliance Assurance, Procedures for Measuring Regions’ “State Assists” that Help Remedy Violations (May 31, 2019).

<sup>11</sup> Joint work planning has been proceeding under the January 2018 interim guidance for over a year and a half. In the increasingly rare situation where an action has not gone through that or a similar prior process and the state or the EPA seeks a change in the lead agency for an enforcement action, a decision on changing the lead will be made only after consultation among the state’s Secretary or Commissioner, the Regional Administrator, and the Assistant Administrator for the Office of Enforcement and Compliance Assurance. Changes in lead should be memorialized in writing and should include the requirement that the EPA and the state will periodically discuss the progress of the case. To minimize delays in returning an entity to compliance, the likelihood that the EPA will agree to a mid-course change in case lead from the EPA to a state will decrease as EPA case development becomes more advanced.

## II. ROLES OF THE EPA AND STATES IN IMPLEMENTING AUTHORIZED PROGRAMS

The EPA will generally defer to a state as the primary implementer of inspections and enforcement in authorized programs. The EPA, however, retains concurrent enforcement authority and so there are specific situations where the EPA may choose to take direct action after following the processes in Section I.<sup>12</sup> Examples of situations that could warrant EPA involvement include the following.

- 1) **Joint work planning or specific situations where the state requests that the EPA take the lead.** Using the processes described in Section I, the EPA may provide enforcement assistance as requested by a state or may take the lead in an enforcement action, sub-program, sector, or geographic area under an EPA-state work-sharing arrangement.
- 2) **Violations that are part of a National Compliance Initiative.** The EPA and the states should discuss work-sharing and how to make the best collective use of EPA and state resources and expertise to achieve the goals of the National Compliance Initiatives (“NCIs”). NCIs will be defined as a subset of cases in a program area where the EPA has determined that national consistency and federal assistance in achieving compliance are important to the protection of public health and the environment. While NCIs are intended to address widespread noncompliance problems, such problems may not be present in each jurisdiction nor a priority for each state. States are not obligated to participate in NCIs, although the EPA welcomes their participation. The EPA is expected to take the lead in some of the specific enforcement actions identified as NCI actions to apply and maintain its expertise, to ensure consistency, and to promote a level playing field, while at the same time inviting individual states to join in a judicial case as it relates to facilities in that state. If a state proposes to take the lead in an NCI case, the EPA should defer to a state that agrees to seek compliance and enforcement outcomes consistent with EPA-led resolutions elsewhere in the nation. States and the EPA are expected to share with each other the specifics of outcomes of the NCI enforcement actions for which they have the lead. The EPA region should provide OECA with a list of facilities where the joint planning process results in a state taking the lead for an enforcement action that falls under an NCI.
- 3) **Emergency situations or situations where there is substantial risk to human health or the environment.** In consultation and coordination with the state, the EPA may take direct action or supplement state enforcement resources in these circumstances.
- 4) **Situations where a state lacks adequate equipment, resources, or expertise.** While the states have built capable environmental enforcement programs, the EPA may take the lead in a case where the state does not have the equipment, resources, or expertise necessary to enforce an aspect of an authorized statutory program. The EPA should defer more to a state that has demonstrated greater compliance assurance capability and may defer less to a state that continues to have difficulty improving compliance. In cases where less deference may be warranted, the EPA and the state should consider working jointly on an enforcement action to build state capacity.

---

<sup>12</sup> See Wheeler at 3 (“States and tribes have the primary role in state- and tribal-implemented federal programs, and the EPA will generally defer to states and tribes in their day-to-day activities. At the same time, the EPA remains responsible and accountable to the President, the Congress and the public for upholding the rule of law . . . and ensuring that federal statutes are consistently . . . enforced.”).

- 5) **Situations involving multi-state or multi-jurisdictional interests or interstate impacts.** The EPA should take the lead in cases addressing noncompliance at facilities owned or operated by the same entity in multiple states to ensure consistency and a level playing field, while at the same time inviting individual states with affected facilities to join the case. Similarly, the EPA may take the lead in enforcement actions addressing significant cross-boundary impacts affecting other states or nations to ensure that cross-boundary impacts from noncompliance are resolved equitably.
- 6) **Significant violations that the state has not timely or appropriately addressed.** The EPA may take an enforcement action where a state is not taking timely and appropriate action.
- 7) **Serious violations for which the EPA's criminal enforcement authorities may be needed.** Because only a handful of states have active environmental criminal enforcement programs, most environmental criminal investigations are performed by the EPA in consultation and cooperation with local law enforcement authorities.
- 8) **State enforcement program review inspections.** The EPA has a responsibility under the federal environmental statutes to conduct a limited number of inspections to verify the efficacy of authorized enforcement programs.<sup>13</sup>
- 9) **Situations that involve enforcement at federal and state owned or operated facilities.** The EPA may take the lead or assist a state in an enforcement action at a federally owned or operated facility. The EPA may also take the lead in an enforcement action against a state owned or operated facility where there are conflicts internal to the state that make state enforcement less effective.

### III. PROCESS FOR THE ELEVATION OF ISSUES

Issues that may arise under the processes in Sections I or II must be elevated and resolved as quickly as practicable.<sup>14</sup> The following best practices should be followed.

- 1) Issues should be resolved whenever possible at the EPA and state career management level.
- 2) If career management cannot resolve an issue, the matter should be elevated within thirty days for resolution by regional and state senior management.
- 3) If following elevation within the region and the state there remains a dispute between the Regional Administrator and the State Secretary or Commissioner, the matter should be elevated within sixty days to the Assistant Administrator for the Office of Enforcement and Compliance Assurance for a decision. The Regional Administrator and the State Secretary or Commissioner will be afforded the opportunity to present the matter in dispute to the Assistant Administrator prior to a final decision.

---

<sup>13</sup> This policy does not concern the situation where a state has not addressed State Review Framework deficiencies adequately. Communications regarding these deficiencies should take place within the structure of that program.

<sup>14</sup> Regions and states may continue to use the dispute resolution provisions in their existing bilateral agreements to the extent they are not inconsistent with this policy.

**To:** Starfield, Lawrence[Starfield.Lawrence@epa.gov]  
**From:** Bodine, Susan[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8C2CC6086FCC44C3BE6B5D32B262D983-BODINE, SUS]  
**Sent:** Sat 3/21/2020 3:22:08 PM (UTC)  
**Subject:** Message Recall Success: Latest version of enforcement flexibilities paper

**To:** Doyle, Brett[doyle.brett@epa.gov]  
**From:** bodine.susan@epa.gov[bodine.susan@epa.gov]  
**Sent:** Sat 3/21/2020 12:32:22 AM (UTC)  
**Subject:** Re: Enforcement Discretion Question

As are we all.  
Working on it. Hopefully Monday or Tuesday

Sent from my iPhone

On Mar 20, 2020, at 3:36 PM, Doyle, Brett <doyle.brett@epa.gov> wrote:

Hi Susan,

Is there anything we can say publicly about enforcement discretion due to COVID-19? I'm getting questions from several different industry groups right now.

Thanks,

Brett

## Appointment

---

**From:** Loving, Shanita [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=439CE9C2D2104080A1B5908D3402BF20-LOVING, SHANITA]  
**Sent:** 3/23/2020 11:44:21 AM  
**To:** Bodine, Susan [bodine.susan@epa.gov]; Starfield, Lawrence [Starfield.Lawrence@epa.gov]; Irving, John [Irving.John@epa.gov]; Mackey, Cyndy [Mackey.Cyndy@epa.gov]; Hindin, David [Hindin.David@epa.gov]; Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]; Tran, Victoria [tran.victoria@epa.gov]; Koslow, Karin [Koslow.Karin@epa.gov]; Johnson, Kathleen [Johnson.Kathleen@epa.gov]; Leff, Karin [Leff.Karin@epa.gov]; Barnet, Henry [Barnet.Henry@epa.gov]; Leff, Karin [Leff.Karin@epa.gov]  
**Subject:** 3-22-20 Version Discussion  
**Location:** CALL ONLY! Call-in Number: **Ex. 6 Personal Privacy (PP)**  
**Start:** 3/23/2020 3:00:00 PM  
**End:** 3/23/2020 3:30:00 PM  
**Show Time As:** Busy

## Appointment

---

**From:** Loving, Shanita [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=439CE9C2D2104080A1B5908D3402BF20-LOVING, SHANITA]  
**Sent:** 3/23/2020 11:44:21 AM  
**To:** Bodine, Susan [bodine.susan@epa.gov]; Starfield, Lawrence [Starfield.Lawrence@epa.gov]; Irving, John [Irving.John@epa.gov]; Mackey, Cyndy [Mackey.Cyndy@epa.gov]; Hindin, David [Hindin.David@epa.gov]; Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]; Tran, Victoria [tran.victoria@epa.gov]; Koslow, Karin [Koslow.Karin@epa.gov]; Johnson, Kathleen [Johnson.Kathleen@epa.gov]; Leff, Karin [Leff.Karin@epa.gov]; Barnet, Henry [Barnet.Henry@epa.gov]  
**Subject:** 3-22-20 Version Discussion  
**Location:** CALL ONLY! Call-in Number **Ex. 6 Personal Privacy (PP)**  
**Start:** 3/23/2020 3:00:00 PM  
**End:** 3/23/2020 3:30:00 PM  
**Show Time As:** Busy



## Appointment

---

**From:** Wilwerding, Joseph [Wilwerding.Joseph@epa.gov]  
**Sent:** 3/16/2020 8:42:48 PM  
**To:** Wilwerding, Joseph [Wilwerding.Joseph@epa.gov]; Sutin, Elyana [Sutin.Elyana@epa.gov]; Irving, John [Irving.John@epa.gov]; ECAD Directors and Deputies-Designees [ECAD\_Directors\_and\_Deputies-Designees@epa.gov]; Bodine, Susan [bodine.susan@epa.gov]; Starfield, Lawrence [Starfield.Lawrence@epa.gov]; Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]; Koslow, Karin [Koslow.Karin@epa.gov]; Hindin, David [Hindin.David@epa.gov]; Werner, Jacqueline [Werner.Jacqueline@epa.gov]; Dombrowski, John [Dombrowski.John@epa.gov]; Mackey, Cyndy [Mackey.Cyndy@epa.gov]; Leff, Karin [Leff.Karin@epa.gov]; Johnson, Kathleen [Johnson.Kathleen@epa.gov]; Regional Counsels and Deputies [Regional\_Counsels\_and\_Deputies@epa.gov]; Schefski, Kenneth [Schefski.Kenneth@epa.gov]  
**CC:** Dean, Abigail [Dean.Abigail@epa.gov]; Armstrong, Joan [Armstrong.Joan@epa.gov]; Gardner, Allison [Gardner.Allison@epa.gov]; Kowalski, Edward [Kowalski.Edward@epa.gov]; Rodrigues, Cecil [rodrigues.cecil@epa.gov]; Mastro, Donna [Mastro.Donna@epa.gov]; Kemker, Carol [Kemker.Carol@epa.gov]; Quast, Sylvia [Quast.Sylvia@epa.gov]; LaPosta, Dore [LaPosta.Dore@epa.gov]; Davies, Lauris [Davies.Lauris@epa.gov]; Lubbe, Wendy [Lubbe.Wendy@epa.gov]; Chow, James [chow.james@epa.gov]; Nelson, Leverett [nelson.leverett@epa.gov]; Simon, Paul [Simon.Paul@epa.gov]; Melvin, Karen [Melvin.Karen@epa.gov]; Meinhardt, Danielle [meinhardt.danielle@epa.gov]; Guerrero, Carmen [guerrero.carmen@epa.gov]; Busterud, Gretchen [Busterud.Gretchen@epa.gov]; Canzler, Erica [Canzler.Erica@epa.gov]; Humphrey, Leslie [Humphrey.Leslie@epa.gov]; Welton, Patricia [Welton.Patricia@epa.gov]; Marshalonis, Dino [Marshalonis.Dino@epa.gov]; Anderson, Julie [Anderson.Julie@epa.gov]; Russo, Rebecca [Russo.Rebecca@epa.gov]; Skelley, Dana [Skelley.Dana@epa.gov]; Gilley, Anne [Gilley.anne@epa.gov]; Miller, Amy [Miller.Amy@epa.gov]; Anderson, Andrew [anderson.andrew@epa.gov]; Jones, Joel E. [Jones.Joel@epa.gov]; Jerison, Joanna [Jerison.Joanna@epa.gov]; Breneman, Sara [breneman.sara@epa.gov]

**Subject:** ED/RC COVID-19 Update Call: +[Ex. 6 Personal Privacy (PP)] (Dial-in Number)  
**Attachments:** Untitled Attachment; ED/RC COVID-19 Update Call: [Ex. 6 Personal Privacy (PP)] (Dial-in Number)  
**Location:** Conference call

**Start:** 3/18/2020 7:00:00 PM  
**End:** 3/18/2020 8:00:00 PM  
**Show Time As:** Tentative

**Recurrence:** Weekly  
every Wednesday from 1:00 PM to 2:00 PM

All, this is a weekly call to address enforcement responses and policies related to COVID-19. Please join us today as we discuss who needs to participate and how this call will be used in the coming weeks. Please see the distribution list for current invitees.

[Ex. 6 Personal Privacy (PP)] (Dial-in Number)

Conference ID: [Ex. 6 Personal Privacy (PP)]

## Appointment

---

**From:** Wilwerding, Joseph [Wilwerding.Joseph@epa.gov]  
**Sent:** 3/16/2020 8:42:48 PM  
**To:** Wilwerding, Joseph [Wilwerding.Joseph@epa.gov]; Irving, John [Irving.John@epa.gov]; ECAD Directors and Deputies-Designees [ECAD\_Directors\_and\_Deputies-Designees@epa.gov]; Bodine, Susan [bodine.susan@epa.gov]; Starfield, Lawrence [Starfield.Lawrence@epa.gov]; Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]; Koslow, Karin [Koslow.Karin@epa.gov]; Hindin, David [Hindin.David@epa.gov]; Werner, Jacqueline [Werner.Jacqueline@epa.gov]; Dombrowski, John [Dombrowski.John@epa.gov]; Mackey, Cyndy [Mackey.Cyndy@epa.gov]; Leff, Karin [Leff.Karin@epa.gov]; Johnson, Kathleen [Johnson.Kathleen@epa.gov]; Regional Counsels and Deputies [Regional\_Counsels\_and\_Deputies@epa.gov]  
**CC:** Dean, Abigail [Dean.Abigail@epa.gov]; Sutin, Elyana [Sutin.Elyana@epa.gov]; Armstrong, Joan [Armstrong.Joan@epa.gov]; Gardner, Allison [Gardner.Allison@epa.gov]; Kowalski, Edward [Kowalski.Edward@epa.gov]; Rodrigues, Cecil [rodrigues.cecil@epa.gov]; Mastro, Donna [Mastro.Donna@epa.gov]; Kemker, Carol [Kemker.Carol@epa.gov]; Quast, Sylvia [Quast.Sylvia@epa.gov]; LaPosta, Dore [LaPosta.Dore@epa.gov]; Davies, Lauris [Davies.Lauris@epa.gov]; Lubbe, Wendy [Lubbe.Wendy@epa.gov]; Chow, James [chow.james@epa.gov]; Nelson, Leverett [nelson.leverett@epa.gov]; Simon, Paul [Simon.Paul@epa.gov]; Melvin, Karen [Melvin.Karen@epa.gov]; Meinhardt, Danielle [meinhardt.danielle@epa.gov]; Guerrero, Carmen [guerrero.carmen@epa.gov]; Busterud, Gretchen [Busterud.Gretchen@epa.gov]; Canzler, Erica [Canzler.Erica@epa.gov]; Humphrey, Leslie [Humphrey.Leslie@epa.gov]; Welton, Patricia [Welton.Patricia@epa.gov]; Marshalonis, Dino [Marshalonis.Dino@epa.gov]; Anderson, Julie [Anderson.Julie@epa.gov]; Russo, Rebecca [Russo.Rebecca@epa.gov]; Skelley, Dana [Skelley.Dana@epa.gov]; Gilley, Anne [Gilley.anne@epa.gov]; Miller, Amy [Miller.Amy@epa.gov]; Anderson, Andrew [anderson.andrew@epa.gov]; Jones, Joel E. [Jones.Joel@epa.gov]

**Subject:** ED/RC COVID-19 Update Call: + [Ex. 6 Personal Privacy (PP)] # (Dial-in Number)  
**Attachments:** Untitled Attachment; ED/RC COVID-19 Update Call [Ex. 6 Personal Privacy (PP)] (Dial-in Number)  
**Location:** Conference call

**Start:** 3/18/2020 7:00:00 PM  
**End:** 3/18/2020 8:00:00 PM  
**Show Time As:** Tentative

**Recurrence:** Weekly  
every Wednesday from 1:00 PM to 2:00 PM

All, this is a weekly call to address enforcement responses and policies related to COVID-19. Please join us today as we discuss who needs to participate and how this call will be used in the coming weeks. Please see the distribution list for current invitees.

[Ex. 6 Personal Privacy (PP)] (Dial-in Number)

[Ex. 6 Personal Privacy (PP)]

## Appointment

---

**From:** Wilwerding, Joseph [Wilwerding.Joseph@epa.gov]  
**Sent:** 3/16/2020 8:42:48 PM  
**To:** Wilwerding, Joseph [Wilwerding.Joseph@epa.gov]; Irving, John [Irving.John@epa.gov]; ECAD Directors and Deputies-Designees [ECAD\_Directors\_and\_Deputies-Designees@epa.gov]; Bodine, Susan [bodine.susan@epa.gov]; Starfield, Lawrence [Starfield.Lawrence@epa.gov]; Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]; Koslow, Karin [Koslow.Karin@epa.gov]; Hindin, David [Hindin.David@epa.gov]; Werner, Jacqueline [Werner.Jacqueline@epa.gov]; Dombrowski, John [Dombrowski.John@epa.gov]; Mackey, Cyndy [Mackey.Cyndy@epa.gov]; Leff, Karin [Leff.Karin@epa.gov]; Johnson, Kathleen [Johnson.Kathleen@epa.gov]; Regional Counsels and Deputies [Regional\_Counsels\_and\_Deputies@epa.gov]  
**CC:** Dean, Abigail [Dean.Abigail@epa.gov]

**Subject:** ED/RC COVID-19 Update Call: + [Ex. 6 Personal Privacy (PP)] (Dial-in Number)  
**Attachments:** Untitled Attachment; ED/RC COVID-19 Update Call: [Ex. 6 Personal Privacy (PP)] (Dial-in Number)  
**Location:** Conference call  
  
**Start:** 3/18/2020 7:00:00 PM  
**End:** 3/18/2020 8:00:00 PM  
**Show Time As:** Tentative

**Recurrence:** Weekly  
every Wednesday from 1:00 PM to 2:00 PM

All, this is a weekly call to address enforcement responses and policies related to COVID-19. Please join us today as we discuss who needs to participate and how this call will be used in the coming weeks. Please see the distribution list for current invitees.

[Ex. 6 Personal Privacy (PP)] (Dial-in Number)

[Ex. 6 Personal Privacy (PP)]

## Appointment

---

**From:** Wilwerding, Joseph [Wilwerding.Joseph@epa.gov]  
**Sent:** 3/16/2020 8:42:48 PM  
**To:** Wilwerding, Joseph [Wilwerding.Joseph@epa.gov]; Irving, John [Irving.John@epa.gov]; ECAD Directors and Deputies-Designees [ECAD\_Directors\_and\_Deputies-Designees@epa.gov]; Bodine, Susan [bodine.susan@epa.gov]; Starfield, Lawrence [Starfield.Lawrence@epa.gov]; Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]; Koslow, Karin [Koslow.Karin@epa.gov]; Hindin, David [Hindin.David@epa.gov]; Werner, Jacqueline [Werner.Jacqueline@epa.gov]; Dombrowski, John [Dombrowski.John@epa.gov]; Mackey, Cyndy [Mackey.Cyndy@epa.gov]; Leff, Karin [Leff.Karin@epa.gov]; Johnson, Kathleen [Johnson.Kathleen@epa.gov]; Regional Counsels and Deputies [Regional\_Counsels\_and\_Deputies@epa.gov]  
**CC:** Dean, Abigail [Dean.Abigail@epa.gov]

**Subject:** ED/RC COVID-19 Update Call: + [Ex. 6 Personal Privacy (PP)] Dial-in Number)  
**Attachments:** Untitled Attachment  
**Location:** Conference call

**Start:** 3/18/2020 7:00:00 PM  
**End:** 3/18/2020 8:00:00 PM  
**Show Time As:** Tentative

**Recurrence:** Weekly  
every Wednesday from 1:00 PM to 2:00 PM

All, this is a weekly call to address enforcement responses and policies related to COVID-19. Please join us today as we discuss who needs to participate and how this call will be used in the coming weeks. Please see the distribution list for current invitees.

[Ex. 6 Personal Privacy (PP)] Dial-in Number)

[Ex. 6 Personal Privacy (PP)]

**To:** Kelley, Rosemarie[Kelley.Rosemarie@epa.gov]; Irving, John[Irving.John@epa.gov]; Starfield, Lawrence[Starfield.Lawrence@epa.gov]; Hindin, David[Hindin.David@epa.gov]; Johnson, Kathleen[Johnson.Kathleen@epa.gov]  
**Cc:** Shiffman, Cari[Shiffman.Cari@epa.gov]; Mirza, Sabah[Mirza.Sabah@epa.gov]; Tran, Victoria[tran.victoria@epa.gov]  
**Sent:** Thur 3/19/2020 1:26:11 PM (UTC)  
**Subject:** FW: COVID-19 Response

---

**From:** Andy O'Hare <aohare@tfi.org>  
**Sent:** Wednesday, March 18, 2020 3:41 PM  
**To:** Bodine, Susan <bodine.susan@epa.gov>  
**Subject:** COVID-19 Response

Susan,

Good afternoon. I hope this finds you well.

I am writing to pose a question shared with me by one of my members. They wondered whether EPA has formally issued any communications related to environmental law enforcement during the pandemic response. As issue is limited staff at many locations, making the filing of, for example, routine emission reports, much more challenging. Do you believe EPA will exercise some enforcement discretion during this difficult period? If so, what form will that take?

(I presume that EPA itself is facing the same limitations on staff availability and movement as the private sector).

Regards,  
Andy

Andrew (Andy) T. O'Hare, CAE  
Vice President, Public Policy  
The Fertilizer Institute  
425 Third Street, SW  
Suite 950  
Washington, DC 20024  
(202) 515-2704 (office)  
(202) 270-0094 (cell)  
[aohare@tfi.org](mailto:aohare@tfi.org)



**To:** Bodine, Susan[bodine.susan@epa.gov]; Kelley, Rosemarie[Kelley.Rosemarie@epa.gov]  
**Cc:** Irving, John[Irving.John@epa.gov]; Koslow, Karin[Koslow.Karin@epa.gov]; Hindin, David[Hindin.David@epa.gov]; Mackey, Cyndy[Mackey.Cyndy@epa.gov]; Tran, Victoria[tran.victoria@epa.gov]  
**From:** Starfield, Lawrence[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8A89D6CD217D4254A5879ABECB3F314E-STARFIELD, LAWRENCE]  
**Sent:** Sat 3/21/2020 3:21:57 PM (UTC)  
**Subject:** Recall: Latest version of enforcement flexibilities paper

Starfield, Lawrence would like to recall the message, "Latest version of enforcement flexibilities paper".

## Appointment

---

**From:** Loving, Shanita [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=439CE9C2D2104080A1B5908D3402BF20-LOVING, SHANITA]  
**Sent:** 3/19/2020 3:59:46 PM  
**To:** Bodine, Susan [bodine.susan@epa.gov]; Wright, Peter [wright.peter@epa.gov]; Bolen, Brittany [bolen.brittany@epa.gov]; Idsal, Anne [idsal.anne@epa.gov]; Dunn, Alexandra [dunn.alexandra@epa.gov]; Ross, David P [ross.davidp@epa.gov]; Sopkin, Gregory [sopkin.gregory@epa.gov]; Leopold, Matt (OGC) [Leopold.Matt@epa.gov]; Cook, Steven [cook.steven@epa.gov]; Irving, John [Irving.John@epa.gov]; Gunasekara, Mandy [gunasekara.Mandy@epa.gov]  
**CC:** Benevento, Douglas [benevento.douglas@epa.gov]; Dunlap, David [dunlap.david@epa.gov]; McIntosh, Chad [mcintosh.chad@epa.gov]; Cody, Meredith [cody.meredith@epa.gov]  
**Subject:** Call Re: Covid-19 and Request for Flexibility  
**Location:** Call-in Number: Ex. 6 Personal Privacy (PP)  
**Start:** 3/20/2020 7:30:00 PM  
**End:** 3/20/2020 8:15:00 PM  
**Show Time As:** Busy

## Appointment

---

**From:** Loving, Shanita [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=439CE9C2D2104080A1B5908D3402BF20-LOVING, SHANITA]  
**Sent:** 3/19/2020 3:59:46 PM  
**To:** Bodine, Susan [bodine.susan@epa.gov]; Wright, Peter [wright.peter@epa.gov]; Bolen, Brittany [bolen.brittany@epa.gov]; Idsal, Anne [idsal.anne@epa.gov]; Dunn, Alexandra [dunn.alexandra@epa.gov]; Ross, David P [ross.davidp@epa.gov]; Sopkin, Gregory [sopkin.gregory@epa.gov]; Leopold, Matt (OGC) [Leopold.Matt@epa.gov]; Cook, Steven [cook.steven@epa.gov]; Irving, John [Irving.John@epa.gov]  
**CC:** Benevento, Douglas [benevento.douglas@epa.gov]; Dunlap, David [dunlap.david@epa.gov]; McIntosh, Chad [mcintosh.chad@epa.gov]; Cody, Meredith [cody.meredith@epa.gov]  
**Subject:** Call Re: Covid-19 and Request for Flexibility  
**Location:** Call-in Number: Ex. 6 Personal Privacy (PP)  
**Start:** 3/20/2020 7:30:00 PM  
**End:** 3/20/2020 8:15:00 PM  
**Show Time As:** Busy



## Appointment

---

**From:** Loving, Shanita [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=439CE9C2D2104080A1B5908D3402BF20-LOVING, SHANITA]  
**Sent:** 3/19/2020 3:59:46 PM  
**To:** Bodine, Susan [bodine.susan@epa.gov]; Wright, Peter [wright.peter@epa.gov]; Bolen, Brittany [bolen.brittany@epa.gov]; Idsal, Anne [idsal.anne@epa.gov]; Dunn, Alexandra [dunn.alexandra@epa.gov]; Ross, David P [ross.davidp@epa.gov]; Sopkin, Gregory [sopkin.gregory@epa.gov]; Leopold, Matt (OGC) [Leopold.Matt@epa.gov]; Cook, Steven [cook.steven@epa.gov]; Irving, John [Irving.John@epa.gov]  
**CC:** Benevento, Douglas [benevento.douglas@epa.gov]; Dunlap, David [dunlap.david@epa.gov]; McIntosh, Chad [mcintosh.chad@epa.gov]  
**Subject:** Call Re: Covid-19 and Request for Flexibility  
**Location:** Call-in Number: Ex. 6 Personal Privacy (PP)  
**Start:** 3/20/2020 7:30:00 PM  
**End:** 3/20/2020 8:15:00 PM  
**Show Time As:** Busy

## Appointment

---

**From:** Wilwerding, Joseph [Wilwerding.Joseph@epa.gov]  
**Sent:** 3/16/2020 8:42:48 PM  
**To:** Wilwerding, Joseph [Wilwerding.Joseph@epa.gov]; Sutin, Elyana [Sutin.Elyana@epa.gov]; Irving, John [Irving.John@epa.gov]; ECAD Directors and Deputies-Designees [ECAD\_Directors\_and\_Deputies-Designees@epa.gov]; Bodine, Susan [bodine.susan@epa.gov]; Starfield, Lawrence [Starfield.Lawrence@epa.gov]; Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]; Koslow, Karin [Koslow.Karin@epa.gov]; Hindin, David [Hindin.David@epa.gov]; Werner, Jacqueline [Werner.Jacqueline@epa.gov]; Dombrowski, John [Dombrowski.John@epa.gov]; Mackey, Cyndy [Mackey.Cyndy@epa.gov]; Leff, Karin [Leff.Karin@epa.gov]; Johnson, Kathleen [Johnson.Kathleen@epa.gov]; Regional Counsels and Deputies [Regional\_Counsels\_and\_Deputies@epa.gov]; Schefski, Kenneth [Schefski.Kenneth@epa.gov]  
**CC:** Dean, Abigail [Dean.Abigail@epa.gov]; Armstrong, Joan [Armstrong.Joan@epa.gov]; Gardner, Allison [Gardner.Allison@epa.gov]; Kowalski, Edward [Kowalski.Edward@epa.gov]; Rodrigues, Cecil [rodrigues.cecil@epa.gov]; Mastro, Donna [mastro.donna@epa.gov]; Kemker, Carol [Kemker.Carol@epa.gov]; Quast, Sylvia [Quast.Sylvia@epa.gov]; LaPosta, Dore [LaPosta.Dore@epa.gov]; Davies, Lauris [Davies.Lauris@epa.gov]; Lubbe, Wendy [Lubbe.Wendy@epa.gov]; Chow, James [chow.james@epa.gov]; Nelson, Leverett [nelson.leverett@epa.gov]; Simon, Paul [Simon.Paul@epa.gov]; Melvin, Karen [Melvin.Karen@epa.gov]; Meinhardt, Danielle [meinhardt.danielle@epa.gov]; Guerrero, Carmen [guerrero.carmen@epa.gov]; Busterud, Gretchen [Busterud.Gretchen@epa.gov]; Canzler, Erica [Canzler.Erica@epa.gov]; Humphrey, Leslie [Humphrey.Leslie@epa.gov]; Welton, Patricia [Welton.Patricia@epa.gov]; Marshalonis, Dino [Marshalonis.Dino@epa.gov]; Anderson, Julie [Anderson.Julie@epa.gov]; Russo, Rebecca [Russo.Rebecca@epa.gov]; Skelley, Dana [Skelley.Dana@epa.gov]; Gilley, Anne [Gilley.anne@epa.gov]; Miller, Amy [Miller.Amy@epa.gov]; Anderson, Andrew [anderson.andrew@epa.gov]; Jones, Joel E. [Jones.Joel@epa.gov]; Jerison, Joanna [Jerison.Joanna@epa.gov]; Breneman, Sara [breneman.sara@epa.gov]; Cozad, David [Cozad.David@epa.gov]; Pane, Vickie [Pane.Vickie@epa.gov]; Newman, Keriema [Newman.Keriema@epa.gov]; Thompson, Christopher [Thompson.Christopher@epa.gov]; Smith, Suzanne [Smith.Suzanne@epa.gov]; Shiffman, Cari [Shiffman.Cari@epa.gov]; Mirza, Sabah [Mirza.Sabah@epa.gov]; Seager, Cheryl [Seager.Cheryl@epa.gov]  
**Subject:** ED/RC COVID-19 Update Call: + [Ex. 6 Personal Privacy (PP)] (Dial-in Number)  
**Attachments:** Untitled Attachment; ED/RC COVID-19 Update Call: [Ex. 6 Personal Privacy (PP)] (Dial-in Number) ; Untitled Attachment  
**Location:** Conference call  
**Start:** 3/18/2020 7:00:00 PM  
**End:** 3/18/2020 8:00:00 PM  
**Show Time As:** Tentative  
**Recurrence:** Weekly  
every Wednesday from 1:00 PM to 2:00 PM

All, this is a weekly call to address enforcement responses and policies related to COVID-19. Please join us today as we discuss who needs to participate and how this call will be used in the coming weeks. Please see the distribution list for current invitees.

[Ex. 6 Personal Privacy (PP)] (Dial-in Number)

[Ex. 6 Personal Privacy (PP)]

**From:** Microsoft Outlook[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=MICROSOFTEXCHANGE329E71EC88AE4615BBC36AB6CE41109EF7088051]  
**Location:** Call-in Number: **Ex. 6 Personal Privacy (PP)**  
**Importance:** Normal  
**Subject:** Meeting Forward Notification: Call Re: Covid-19 and Request for Flexibility  
**Start Time:** Fri 3/20/2020 7:30:00 PM (UTC)  
**End Time:** Fri 3/20/2020 8:15:00 PM (UTC)  
**Required Attendees:** Bodine, Susan

**Your meeting was forwarded**

Leopold, Matt (OGC) has forwarded your meeting request to additional recipients.

**Required Attendees:** Bodine, Susan  
**Meeting**  
Call Re: Covid-19 and Request for Flexibility

**Required Attendees:** Bodine, Susan  
**Required Attendees:** Bodine, Susan  
**Meeting Time**  
Friday, March 20, 2020 3:30 PM-4:15 PM.

**Required Attendees:** Bodine, Susan  
**Required Attendees:** Bodine, Susan  
**Recipients**  
Cody, Meredith

**Required Attendees:** Bodine, Susan  
All times listed are in the following time zone: (UTC-05:00) Eastern Time (US & Canada)

Sent by Microsoft Exchange Server

**To:** Bodine, Susan[bodine.susan@epa.gov]  
**From:** Hyman, Alana[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D9B724E4473B42E8833F308005723BBD-HYMAN, ALAN]  
**Sent:** Tue 3/24/2020 12:03:57 AM (UTC)  
**Subject:** Re: time with the Administrator

Do you have documents to send or will you send directly to the Administrator?

Sent from my iPhone

On Mar 23, 2020, at 7:57 PM, Bodine, Susan <bodine.susan@epa.gov> wrote:

but he does not have the document yet. Can send now but can we move this to the PM to give him time to read?

Sent from my iPad

On Mar 23, 2020, at 7:56 PM, Bodine, Susan <bodine.susan@epa.gov> wrote:

Thanks 45 min and your title is perfect.

Sent from my iPad

On Mar 23, 2020, at 7:41 PM, Hyman, Alana <Hyman.Alana@epa.gov> wrote:

How much time do you need and what would you like me to label the briefing as?

Sent from my iPhone

On Mar 23, 2020, at 6:13 PM, Bodine, Susan <bodine.susan@epa.gov> wrote:

Can I get time on his schedule tomorrow afternoon to discuss COVID-19 and enforcement discretion? We have a document that is still under review and I plan to send over in the morning. You should invite:

Leopold, Matt (OGC) <Leopold.Matt@epa.gov>; Idsal, Anne <idsal.anne@epa.gov>; Wright, Peter <wright.peter@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>; Benevento, Douglas <benevento.douglas@epa.gov>; Dunn, Alexandra <dunn.alexandra@epa.gov>; McIntosh, Chad <mcintosh.chad@epa.gov>; Ross, David P <ross.davidp@epa.gov>; Gunasekara, Mandy <gunasekara.Mandy@epa.gov>; Sopkin, Gregory <sopkin.gregory@epa.gov>; Dunlap, David <dunlap.david@epa.gov>; Irving, John <Irving.John@epa.gov>; Doyle, Brett <doyle.brett@epa.gov>; Brazauskas, Joseph <brazauskas.joseph@epa.gov>; Molina, Michael [molina.michael@epa.gov](mailto:molina.michael@epa.gov); and Corry.

**To:** Bodine, Susan[bodine.susan@epa.gov]; Starfield, Lawrence[Starfield.Lawrence@epa.gov]; Irving, John[Irving.John@epa.gov]; Kelley, Rosemarie[Kelley.Rosemarie@epa.gov]; Koslow, Karin[Koslow.Karin@epa.gov]  
**Cc:** Shiffman, Cari[Shiffman.Cari@epa.gov]; Mirza, Sabah[Mirza.Sabah@epa.gov]; Dean, Abigail[Dean.Abigail@epa.gov]; Bohan, Suzanne[bohan.suzanne@epa.gov]; Schefski, Kenneth[Schefski.Kenneth@epa.gov]; Sutin, Elyana[Sutin.Elyana@epa.gov]  
**From:** Wilwerding, Joseph[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B22A8959DB2548EB83549805319576D4-WILWERDING,]  
**Sent:** Wed 3/18/2020 6:01:34 PM (UTC)  
**Subject:** Agenda for COVID-19 call today: quick feedback requested

Hi all, please let us know if the agenda below looks ok for the call today (Susan and Rosemarie, please see specific items in red for you both).

Also, I received a call from one RC about who asked for this call and why, as it is taking away from other critical work. We may want to address that up front (it gets into the Participation topic for future calls).

Thanks,  
Joe/Abby/Team

# Ex. 5 Deliberative Process (DP)

**Joe Wilwerding**  
OECA Lead Region Coordinator  
USEPA Region 8, Enforcement and Compliance Assurance Division  
1595 Wynkoop Street, Denver, CO 80202-1129  
O: 303-312-6729, C: Ex. 6 Personal Privacy (PP), [wilwerding.joseph@epa.gov](mailto:wilwerding.joseph@epa.gov)

**To:** Bodine, Susan[bodine.susan@epa.gov]  
**From:** Hyman, Alana[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D9B724E4473B42E8833F308005723BBD-HYMAN, ALAN]  
**Sent:** Mon 3/23/2020 11:57:43 PM (UTC)  
**Subject:** RE: time with the Administrator

Thank you. I figured you would definitely alert me if I was way off base or needed more time! I will alert the Administrator.

---

**From:** Bodine, Susan <bodine.susan@epa.gov>  
**Sent:** Monday, March 23, 2020 7:56 PM  
**To:** Hyman, Alana <Hyman.Alana@epa.gov>  
**Subject:** Re: time with the Administrator

Thanks 45 min and your title is perfect.

Sent from my iPad

On Mar 23, 2020, at 7:41 PM, Hyman, Alana <Hyman.Alana@epa.gov> wrote:

How much time do you need and what would you like me to label the briefing as?

Sent from my iPhone

On Mar 23, 2020, at 6:13 PM, Bodine, Susan <bodine.susan@epa.gov> wrote:

Can I get time on his schedule tomorrow afternoon to discuss COVID-19 and enforcement discretion?  
We have a document that is still under review and I plan to send over in the morning. You should invite:

Leopold, Matt (OGC) <Leopold.Matt@epa.gov>; Idsal, Anne <idsal.anne@epa.gov>; Wright, Peter <wright.peter@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>; Benevento, Douglas <benevento.douglas@epa.gov>; Dunn, Alexandra <dunn.alexandra@epa.gov>; McIntosh, Chad <mcintosh.chad@epa.gov>; Ross, David P <ross.davidp@epa.gov>; Gunasekara, Mandy <gunasekara.Mandy@epa.gov>; Sopkin, Gregory <sopkin.gregory@epa.gov>; Dunlap, David <dunlap.david@epa.gov>; Irving, John <Irving.John@epa.gov>; Doyle, Brett <doyle.brett@epa.gov>; Brazauskas, Joseph <brazauskas.joseph@epa.gov>; Molina, Michael <molina.michael@epa.gov> and Corry.

**To:** Bodine, Susan[bodine.susan@epa.gov]  
**From:** Loving, Shanita[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=439CE9C2D2104080A1B5908D3402BF20-LOVING, SHANITA]  
**Sent:** Thur 3/19/2020 5:23:26 PM (UTC)  
**Subject:** RE: please set up a call on Friday

Thank you.

Shanita Loving  
Program Specialist  
Environmental Protection Agency  
IO of the Assist. Administrator of the Office of Enforcement & Compliance Assurance  
1200 Pennsylvania Ave., NW  
WJC-South, Room 3204  
Washington, DC 20460  
Phone: (202) 564-2440

**From:** Bodine, Susan <bodine.susan@epa.gov>  
**Sent:** Thursday, March 19, 2020 1:10 PM  
**To:** Loving, Shanita <Loving.Shanita@epa.gov>  
**Subject:** RE: please set up a call on Friday

# Ex. 5 Deliberative Process (DP)

**From:** Loving, Shanita <Loving.Shanita@epa.gov>  
**Sent:** Thursday, March 19, 2020 12:50 PM  
**To:** Bodine, Susan <bodine.susan@epa.gov>  
**Subject:** RE: please set up a call on Friday

Hi Susan,

Doug’s office is asking for agenda/discussion topics for this meeting for Friday, would you mind sending to me if any?

Thanks,

Shanita Loving  
Program Specialist  
Environmental Protection Agency  
IO of the Assist. Administrator of the Office of Enforcement & Compliance Assurance  
1200 Pennsylvania Ave., NW  
WJC-South, Room 3204  
Washington, DC 20460  
Phone: (202) 564-2440

**From:** Bodine, Susan <bodine.susan@epa.gov>  
**Sent:** Thursday, March 19, 2020 11:56 AM  
**To:** Loving, Shanita <Loving.Shanita@epa.gov>  
**Subject:** RE: please set up a call on Friday

No, we can proceed without him. Add him to the invite as optional.

**From:** Loving, Shanita <Loving.Shanita@epa.gov>  
**Sent:** Thursday, March 19, 2020 11:06 AM

**To:** Bodine, Susan <[bodine.susan@epa.gov](mailto:bodine.susan@epa.gov)>

**Subject:** RE: please set up a call on Friday

Hi Susan,

Is Doug essential to this call? Everyone else but Doug seems to be available tomorrow. He could be available on Monday and Tuesday. Would you like for me to try to coordinate a time for one of those days?

Thanks,

Shanita Loving  
Program Specialist  
Environmental Protection Agency  
IO of the Assist. Administrator of the Office of Enforcement & Compliance Assurance  
1200 Pennsylvania Ave., NW  
WJC-South, Room 3204  
Washington, DC 20460  
Phone: (202) 564-2440

---

**From:** Bodine, Susan <[bodine.susan@epa.gov](mailto:bodine.susan@epa.gov)>

**Sent:** Thursday, March 19, 2020 9:40 AM

**To:** Loving, Shanita <[Loving.Shanita@epa.gov](mailto:Loving.Shanita@epa.gov)>

**Cc:** Bailey-Morton, Ethel <[Bailey-Morton.Ethel@epa.gov](mailto:Bailey-Morton.Ethel@epa.gov)>

**Subject:** RE: please set up a call on Friday

Also Doug Benevento and Greg Sopkin (R8 RA).

---

**From:** Bodine, Susan

**Sent:** Thursday, March 19, 2020 9:33 AM

**To:** Loving, Shanita <[Loving.Shanita@epa.gov](mailto:Loving.Shanita@epa.gov)>

**Cc:** Bailey-Morton, Ethel <[Bailey-Morton.Ethel@epa.gov](mailto:Bailey-Morton.Ethel@epa.gov)>

**Subject:** RE: please set up a call on Friday

Add Matt Leopold.

---

**From:** Bodine, Susan

**Sent:** Thursday, March 19, 2020 9:30 AM

**To:** Loving, Shanita <[Loving.Shanita@epa.gov](mailto:Loving.Shanita@epa.gov)>

**Cc:** Bailey-Morton, Ethel <[Bailey-Morton.Ethel@epa.gov](mailto:Bailey-Morton.Ethel@epa.gov)>

**Subject:** please set up a call on Friday

With Peter Wright, Brittany Bolen, Ann Idsal, Alex Dunn and Dave Ross (or their designees – they can forward the invite).

Covid-19 and requests for flexibility

Sometime tomorrow. Conference call.

Thanks,

Susan



**To:** Bodine, Susan[bodine.susan@epa.gov]  
**From:** Garvey, Megan[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=7623E34F292C43ECBB4B01555594B604-GARVEY, MEG]  
**Sent:** Wed 3/25/2020 7:54:43 PM (UTC)  
**Subject:** RE: RA Call on Friday

Fantastic. Will forward the invite. Thank you.

Megan E. Garvey  
Senior Counselor

Ex. 6 Personal Privacy (PP)

---

**From:** Bodine, Susan <bodine.susan@epa.gov>  
**Sent:** Wednesday, March 25, 2020 1:54 PM  
**To:** Garvey, Megan <garvey.megan@epa.gov>  
**Subject:** RE: RA Call on Friday

Yes, I am available.

---

**From:** Garvey, Megan <garvey.megan@epa.gov>  
**Sent:** Wednesday, March 25, 2020 3:52 PM  
**To:** Bodine, Susan <bodine.susan@epa.gov>  
**Subject:** RA Call on Friday

Hi, Susan,

We have an RA call on Friday from 1 – 2p Eastern. Donna is joining Doug to discuss COVID-19 developments with the RAs. Also wanted to extend an invite to you, to discuss the Agency’s enforcement discretion statement and related efforts. OCIR is planning to attend to briefly discuss the FAQ website they are creating (re: COVID-19-related questions received from ECOS and states). Are you interested in and available to join us?

Thanks, Megan

Megan E. Garvey  
Senior Counselor  
Office of the Administrator  
U.S. Environmental Protection Agency  
Work: 303.312.6192 | Cell: Ex. 6 Personal Privacy (PP)

**To:** Bodine, Susan[bodine.susan@epa.gov]  
**Cc:** Bailey-Morton, Ethel[Bailey-Morton.Ethel@epa.gov]  
**From:** Loving, Shanita[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=439CE9C2D2104080A1B5908D3402BF20-LOVING, SHANITA]  
**Sent:** Thur 3/19/2020 1:54:39 PM (UTC)  
**Subject:** RE: please set up a call on Friday

Okay, thanks.

Shanita Loving  
Program Specialist  
Environmental Protection Agency  
IO of the Assist. Administrator of the Office of Enforcement & Compliance Assurance  
1200 Pennsylvania Ave., NW  
WJC-South, Room 3204  
Washington, DC 20460  
Phone: (202) 564-2440

---

**From:** Bodine, Susan <bodine.susan@epa.gov>  
**Sent:** Thursday, March 19, 2020 9:40 AM  
**To:** Loving, Shanita <Loving.Shanita@epa.gov>  
**Cc:** Bailey-Morton, Ethel <Bailey-Morton.Ethel@epa.gov>  
**Subject:** RE: please set up a call on Friday

Also Doug Benevento and Greg Sopkin (R8 RA).

---

**From:** Bodine, Susan  
**Sent:** Thursday, March 19, 2020 9:33 AM  
**To:** Loving, Shanita <[Loving.Shanita@epa.gov](mailto:Loving.Shanita@epa.gov)>  
**Cc:** Bailey-Morton, Ethel <[Bailey-Morton.Ethel@epa.gov](mailto:Bailey-Morton.Ethel@epa.gov)>  
**Subject:** RE: please set up a call on Friday

Add Matt Leopold.

---

**From:** Bodine, Susan  
**Sent:** Thursday, March 19, 2020 9:30 AM  
**To:** Loving, Shanita <[Loving.Shanita@epa.gov](mailto:Loving.Shanita@epa.gov)>  
**Cc:** Bailey-Morton, Ethel <[Bailey-Morton.Ethel@epa.gov](mailto:Bailey-Morton.Ethel@epa.gov)>  
**Subject:** please set up a call on Friday

With Peter Wright, Brittany Bolen, Ann Idsal, Alex Dunn and Dave Ross (or their designees – they can forward the invite).

Covid-19 and requests for flexibility

Sometime tomorrow. Conference call.

Thanks,

Susan

**To:** Kelley, Rosemarie[Kelley.Rosemarie@epa.gov]; Starfield, Lawrence[Starfield.Lawrence@epa.gov]; Irving, John[Irving.John@epa.gov]  
**Sent:** Thur 3/19/2020 1:37:42 PM (UTC)  
**Subject:** RE: OCE Weekly Agenda for 3/19/20

Should Kathleen also be part of this discussion?

---

**From:** Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>  
**Sent:** Wednesday, March 18, 2020 9:02 PM  
**To:** Bodine, Susan <bodine.susan@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Irving, John <Irving.John@epa.gov>; Bailey-Morton, Ethel <Bailey-Morton.Ethel@epa.gov>; Loving, Shanita <Loving.Shanita@epa.gov>; Shiffman, Cari <Shiffman.Cari@epa.gov>; Mirza, Sabah <Mirza.Sabah@epa.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>; Johnson, Kathleen <Johnson.Kathleen@epa.gov>; BERMAN, TESSA <Berman.Tessa@epa.gov>  
**Cc:** OECA-OCE-MANAGERS <OECAOCEMANAGERS@epa.gov>; Buterbaugh, Kristin <Buterbaugh.Kristin@epa.gov>; Leff, Karin <Leff.Karin@epa.gov>; Mackey, Cyndy <Mackey.Cyndy@epa.gov>; Hindin, David <Hindin.David@epa.gov>  
**Subject:** RE: OCE Weekly Agenda for 3/19/20

Susan—

Attached is our options paper for providing flexibility to entities that may have difficulty complying due the COVID-19.

Rosemarie

---

**From:** Buterbaugh, Kristin <Buterbaugh.Kristin@epa.gov>  
**Sent:** Wednesday, March 18, 2020 3:01 PM  
**To:** Bodine, Susan <bodine.susan@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Irving, John <Irving.John@epa.gov>; Bailey-Morton, Ethel <Bailey-Morton.Ethel@epa.gov>; Loving, Shanita <Loving.Shanita@epa.gov>; Shiffman, Cari <Shiffman.Cari@epa.gov>; Mirza, Sabah <Mirza.Sabah@epa.gov>; OECA-OCE-MANAGERS <OECAOCEMANAGERS@epa.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>; Johnson, Kathleen <Johnson.Kathleen@epa.gov>; BERMAN, TESSA <Berman.Tessa@epa.gov>  
**Cc:** Buterbaugh, Kristin <Buterbaugh.Kristin@epa.gov>  
**Subject:** OCE Weekly Agenda for 3/19/20

The agenda and briefing paper for the OCE Weekly on March 19<sup>th</sup> are attached. Thank you.

**Kristin Buterbaugh**  
Special Assistant  
OECA - Office of Civil Enforcement  
U.S. Environmental Protection Agency  
WJC South 3119C  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460  
(202) 564-4479  
[Buterbaugh.Kristin@epa.gov](mailto:Buterbaugh.Kristin@epa.gov)

*This email may contain deliberative, attorney-client, attorney work product, or otherwise privileged material. Do not release under FOIA without appropriate review. If this email has been received by you in error, you are instructed to delete it from your machine and all storage media whether electronic or hard copy.*

**To:** Bodine, Susan[bodine.susan@epa.gov]  
**From:** Dunn, Alexandra[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=426D0177EAAB4001A5C85F051565997E-DUNN, ALEXA]  
**Sent:** Wed 3/25/2020 7:44:07 PM (UTC)  
**Subject:** RE: Final draft ready for WH review.

Thanks for including the FIFRA language. Appreciate it very much.

Alexandra Dapolito Dunn, Esq.  
Assistant Administrator  
Office of Chemical Safety and Pollution Prevention  
US Environmental Protection Agency  
Washington, DC

---

**From:** Bodine, Susan <bodine.susan@epa.gov>  
**Sent:** Wednesday, March 25, 2020 3:02 PM  
**To:** Leopold, Matt (OGC) <Leopold.Matt@epa.gov>; Schiermeyer, Corry <schiermeyer.corry@epa.gov>  
**Cc:** Benevento, Douglas <benevento.douglas@epa.gov>; Molina, Michael <molina.michael@epa.gov> Ex. 6 Personal Privacy (PP)  
Ex. 6 Personal Privacy (PP) Ross, David P <ross.davidp@epa.gov>; Dunn, Alexandra <dunn.alexandra@epa.gov>; Wright, Peter <wright.peter@epa.gov>; Dunlap, David <dunlap.david@epa.gov>; Idsal, Anne <idsal.anne@epa.gov>; McIntosh, Chad <mcintosh.chad@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>; Irving, John <Irving.John@epa.gov>; Gunasekara, Mandy <gunasekara.Mandy@epa.gov>; Sopkin, Gregory <sopkin.gregory@epa.gov>  
**Subject:** Final draft ready for WH review.

All,

Attached is the final draft enforcement discretion policy.

Matt can you send it to WH counsel’s office?

Corry can you coordinate with your contacts?

Thanks for all your help.

Susan

Susan Parker Bodine  
Assistant Administrator  
Office of Enforcement and Compliance Assurance  
202-564-2440

This message is CONFIDENTIAL, and may contain legally privileged information. If you are not the intended recipient, or believe you received this communication in error, please delete it immediately, do not copy, and notify the sender. Thank you.

**To:** Bodine, Susan[bodine.susan@epa.gov]  
**From:** Dunn, Alexandra[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=426D0177EAAB4001A5C85F051565997E-DUNN, ALEXA]  
**Sent:** Fri 3/20/2020 6:28:57 PM (UTC)  
**Subject:** RE: Request for EPA Enforcement Discretion in Certain Compliance Activities

The pressure is building. I had a group ask today to delay the TSCA fees rule til the end of the calendar year.

Alexandra Dapolito Dunn, Esq.  
Assistant Administrator  
Office of Chemical Safety and Pollution Prevention  
US Environmental Protection Agency  
Washington, DC

---

**From:** Bodine, Susan <bodine.susan@epa.gov>  
**Sent:** Friday, March 20, 2020 1:55 PM  
**To:** Dunn, Alexandra <dunn.alexandra@epa.gov>  
**Subject:** FW: Request for EPA Enforcement Discretion in Certain Compliance Activities

Apparently API has never heard of electronic signatures.

Similarly, export notifications under section 12(b) of the Toxic Substances Control Act must be made within 7 days of forming the intent to export the chemical. Yet corporate policies – again consistent with the guidance provided by public health officials – may limit the ability of corporate employees to travel to obtain necessary signatures certifying compliance, or complete the notices within the timeframe allowed by regulation.

---

**From:** Grabill, Jessica <Jessica\_Grabill@americanchemistry.com> **On Behalf Of** Jahn, Chris  
**Sent:** Friday, March 20, 2020 1:47 PM  
**To:** Wheeler, Andrew <wheeler.andrew@epa.gov>  
**Cc:** Bodine, Susan <bodine.susan@epa.gov>; Dunn, Alexandra <dunn.alexandra@epa.gov>; Leopold, Matt (OGC) <Leopold.Matt@epa.gov>; Ross, David P <ross.davidp@epa.gov>; Idsal, Anne <idsal.anne@epa.gov>; Wright, Peter <wright.peter@epa.gov>  
**Subject:** Request for EPA Enforcement Discretion in Certain Compliance Activities

Dear Mr. Administrator,

As set out in the attached letter, the American Chemistry Council requests that you consider providing enforcement discretion, compliance grace periods, and additional guidance with respect to compliance activities associated with EPA regulatory activities.

Best regards,

Chris Jahn  
President & CEO  
American Chemistry Council

+++++ This message may contain confidential information and is intended only for the individual named. If you are not the named addressee do not disseminate, distribute or copy this email. Please notify the sender immediately by email if you have received this email by mistake and delete this email from your system. E-mail transmission cannot be guaranteed to be secure or error-free as information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete, or contain viruses. The sender therefore does not accept liability for any errors or omissions in the contents of this message which arise as a result of email transmission. American Chemistry Council, 700 – 2nd Street NE, Washington, DC 20002, [www.americanchemistry.com](http://www.americanchemistry.com)

**To:** Bodine, Susan[bodine.susan@epa.gov]  
**From:** Loving, Shanita[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=439CE9C2D2104080A1B5908D3402BF20-LOVING, SHANITA]  
**Sent:** Thur 3/19/2020 3:57:04 PM (UTC)  
**Subject:** RE: please set up a call on Friday

Okay, thank you.

Shanita Loving  
Program Specialist  
Environmental Protection Agency  
IO of the Assist. Administrator of the Office of Enforcement & Compliance Assurance  
1200 Pennsylvania Ave., NW  
WJC-South, Room 3204  
Washington, DC 20460  
Phone: (202) 564-2440

---

**From:** Bodine, Susan <bodine.susan@epa.gov>  
**Sent:** Thursday, March 19, 2020 11:56 AM  
**To:** Loving, Shanita <Loving.Shanita@epa.gov>  
**Subject:** RE: please set up a call on Friday

No, we can proceed without him. Add him to the invite as optional.

---

**From:** Loving, Shanita <Loving.Shanita@epa.gov>  
**Sent:** Thursday, March 19, 2020 11:06 AM  
**To:** Bodine, Susan <bodine.susan@epa.gov>  
**Subject:** RE: please set up a call on Friday

Hi Susan,

Is Doug essential to this call? Everyone else but Doug seems to be available tomorrow. He could be available on Monday and Tuesday. Would you like for me to try to coordinate a time for one of those days?

Thanks,

Shanita Loving  
Program Specialist  
Environmental Protection Agency  
IO of the Assist. Administrator of the Office of Enforcement & Compliance Assurance  
1200 Pennsylvania Ave., NW  
WJC-South, Room 3204  
Washington, DC 20460  
Phone: (202) 564-2440

---

**From:** Bodine, Susan <bodine.susan@epa.gov>  
**Sent:** Thursday, March 19, 2020 9:40 AM  
**To:** Loving, Shanita <Loving.Shanita@epa.gov>  
**Cc:** Bailey-Morton, Ethel <Bailey-Morton.Ethel@epa.gov>  
**Subject:** RE: please set up a call on Friday

Also Doug Benevento and Greg Sopkin (R8 RA).

---

**From:** Bodine, Susan  
**Sent:** Thursday, March 19, 2020 9:33 AM  
**To:** Loving, Shanita <Loving.Shanita@epa.gov>  
**Cc:** Bailey-Morton, Ethel <Bailey-Morton.Ethel@epa.gov>  
**Subject:** RE: please set up a call on Friday

Add Matt Leopold.

---

**From:** Bodine, Susan  
**Sent:** Thursday, March 19, 2020 9:30 AM  
**To:** Loving, Shanita <[Loving.Shanita@epa.gov](mailto:Loving.Shanita@epa.gov)>  
**Cc:** Bailey-Morton, Ethel <[Bailey-Morton.Ethel@epa.gov](mailto:Bailey-Morton.Ethel@epa.gov)>  
**Subject:** please set up a call on Friday

With Peter Wright, Brittany Bolen, Ann Idsal, Alex Dunn and Dave Ross (or their designees – they can forward the invite).

Covid-19 and requests for flexibility

Sometime tomorrow. Conference call.

Thanks,

Susan

**To:** Bodine, Susan[bodine.susan@epa.gov]  
**Cc:** Bailey-Morton, Ethel[Bailey-Morton.Ethel@epa.gov]  
**From:** Loving, Shanita[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=439CE9C2D2104080A1B5908D3402BF20-LOVING, SHANITA]  
**Sent:** Thur 3/19/2020 1:34:45 PM (UTC)  
**Subject:** RE: please set up a call on Friday

Okay.

Thanks,

Shanita Loving  
Program Specialist  
Environmental Protection Agency  
IO of the Assist. Administrator of the Office of Enforcement & Compliance Assurance  
1200 Pennsylvania Ave., NW  
WJC-South, Room 3204  
Washington, DC 20460  
Phone: (202) 564-2440

---

**From:** Bodine, Susan <bodine.susan@epa.gov>  
**Sent:** Thursday, March 19, 2020 9:33 AM  
**To:** Loving, Shanita <Loving.Shanita@epa.gov>  
**Cc:** Bailey-Morton, Ethel <Bailey-Morton.Ethel@epa.gov>  
**Subject:** RE: please set up a call on Friday

Add Matt Leopold.

---

**From:** Bodine, Susan  
**Sent:** Thursday, March 19, 2020 9:30 AM  
**To:** Loving, Shanita <Loving.Shanita@epa.gov>  
**Cc:** Bailey-Morton, Ethel <Bailey-Morton.Ethel@epa.gov>  
**Subject:** please set up a call on Friday

With Peter Wright, Brittany Bolen, Ann Idsal, Alex Dunn and Dave Ross (or their designees – they can forward the invite).

Covid-19 and requests for flexibility

Sometime tomorrow. Conference call.

Thanks,

Susan



**To:** Bodine, Susan[bodine.susan@epa.gov]  
**From:** Bolen, Brittany[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=31E872A691114372B5A6A88482A66E48-BOLEN, BRIT]  
**Sent:** Wed 3/25/2020 9:33:34 PM (UTC)  
**Subject:** RE: Potential EPA Announcement

Yes, just sent him a note and copied you on it.

---

**From:** Bodine, Susan <bodine.susan@epa.gov>  
**Sent:** Wednesday, March 25, 2020 5:19 PM  
**To:** Bolen, Brittany <bolen.brittany@epa.gov>  
**Subject:** RE: Potential EPA Announcement

OK, do you want to set that up?

---

**From:** Bolen, Brittany <bolen.brittany@epa.gov>  
**Sent:** Wednesday, March 25, 2020 5:19 PM  
**To:** Schiermeyer, Corry <schiermeyer.corry@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>  
**Cc:** Woods, Andrea <Woods.Andrea@epa.gov>  
**Subject:** RE: Potential EPA Announcement

Susan, we may want to call Rosario.....

---

**From:** Schiermeyer, Corry <schiermeyer.corry@epa.gov>  
**Sent:** Wednesday, March 25, 2020 5:16 PM  
**To:** Bolen, Brittany <bolen.brittany@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>  
**Cc:** Woods, Andrea <Woods.Andrea@epa.gov>  
**Subject:** FW: Potential EPA Announcement

Susan and Brittany...for your awareness...the OECA guidance is with OIRA.  
Andrea...please add me back in to the email chain.

---

**From:** Nevins, Kristan K. EOP/WHO [Ex. 6 Personal Privacy (PP)]  
**Sent:** Wednesday, March 25, 2020 5:14 PM  
**To:** Schiermeyer, Corry <schiermeyer.corry@epa.gov>  
**Subject:** FW: Potential EPA Announcement

Corry,

My apologies, I left you off when I forwarded this document. Please see below from OMB.

Thank you,  
kkn

---

**From:** Frazier, Ashley N. EOP/OMB [Ex. 6 Personal Privacy (PP)]  
**Sent:** Wednesday, March 25, 2020 5:11 PM  
**To:** Nevins, Kristan K. EOP/WHO [Ex. 6 Personal Privacy (PP)]; Fetalvo, Ninio J. EOP/OVP [Ex. 6 Personal Privacy (PP)]  
Syrek, Tori Q. EOP/WHO [Ex. 6 Personal Privacy (PP)] Woods.Andrea@epa.gov  
**Cc:** Love, Kelly A. EOP/OVP [Ex. 6 Personal Privacy (PP)]; O'Malley, Devin M. EOP/OVP [Ex. 6 Personal Privacy (PP)] DL  
OMB Dir Office OMB\_COVID19OPS [Ex. 6 Personal Privacy (PP)] [Ex. 6 Personal Privacy (PP)]; Palmieri, Rosario A. EOP/OMB  
**Subject:** RE: Potential EPA Announcement

This will need to go through the OIRA review process. I have cc'd Rosario, from our team who will work with EPA.

Thanks,

---

**From:** Nevins, Kristan K. EOP/WHO <[Ex. 6 Personal Privacy (PP)]>  
**Sent:** Wednesday, March 25, 2020 4:55 PM  
**To:** Fetalvo, Ninio J. EOP/OVP <[Ex. 6 Personal Privacy (PP)]>; Syrek, Tori Q. EOP/WHO <[Ex. 6 Personal Privacy (PP)]>  
Woods.Andrea@epa.gov  
**Cc:** Love, Kelly A. EOP/OVP <[Ex. 6 Personal Privacy (PP)]>; O'Malley, Devin M. EOP/OVP <[Ex. 6 Personal Privacy (PP)]>; DL  
OMB Dir Office OMB\_COVID19OF <[Ex. 6 Personal Privacy (PP)]>  
**Subject:** FW: Potential EPA Announcement

+OMB for review

---

**From:** Schiermeyer, Corry <schiermeyer.corry@epa.gov>  
**Sent:** Wednesday, March 25, 2020 3:07 PM  
**To:** Fetalvo, Ninio J. EOP/OVP <[Ex. 6 Personal Privacy (PP)]>; Syrek, Tori Q. EOP/WHO <[Ex. 6 Personal Privacy (PP)]>; Woods,  
Andrea <Woods.Andrea@epa.gov>  
**Cc:** Love, Kelly A. EOP/OVP <[Ex. 6 Personal Privacy (PP)]>; O'Malley, Devin M. EOP/OVP <[Ex. 6 Personal Privacy (PP)]>; Nevins,  
Kristan K. EOP/WHO <[Ex. 6 Personal Privacy (PP)]>  
**Subject:** RE: Potential EPA Announcement

Hello Ninio and Kelly,

Attached is guidance from our Office of Enforcement and Compliance Assurance that they are looking to issue tomorrow. This does have policy implications, so I have cc'd Kristan for OMB.

Our Counsel's office is also circulating through WH Counsel.

Thank you...

---

**From:** Fetalvo, Ninio J. EOP/OVP <[Ex. 6 Personal Privacy (PP)]>  
**Sent:** Tuesday, March 24, 2020 6:40 PM  
**To:** Schiermeyer, Corry <schiermeyer.corry@epa.gov>; Syrek, Tori Q. EOP/WHO <[Ex. 6 Personal Privacy (PP)]>; Woods, Andrea  
<Woods.Andrea@epa.gov>  
**Cc:** Henning, Alexa A. EOP/WHO <[Ex. 6 Personal Privacy (PP)]>; Daravi, Roma S. EOP/WHO  
<[Ex. 6 Personal Privacy (PP)]>; Love, Kelly A. EOP/OVP <[Ex. 6 Personal Privacy (PP)]>; Bowman, Lauren K. EOP/WHO  
<[Ex. 6 Personal Privacy (PP)]>; Porter, Macaulay V. EOP/OVP <[Ex. 6 Personal Privacy (PP)]>; O'Malley, Devin M.  
EOP/OVP <[Ex. 6 Personal Privacy (PP)]>; Miller, Katie R. EOP/OVP <[Ex. 6 Personal Privacy (PP)]>  
**Subject:** RE: Potential EPA Announcement

Got it, thanks.

---

**From:** Schiermeyer, Corry <schiermeyer.corry@epa.gov>  
**Sent:** Tuesday, March 24, 2020 6:36 PM  
**To:** Fetalvo, Ninio J. EOP/OVP <[Ex. 6 Personal Privacy (PP)]>; Syrek, Tori Q. EOP/WHO <[Ex. 6 Personal Privacy (PP)]>; Woods,  
Andrea <Woods.Andrea@epa.gov>  
**Cc:** Henning, Alexa A. EOP/WHO <[Ex. 6 Personal Privacy (PP)]>; Daravi, Roma S. EOP/WHO  
<[Ex. 6 Personal Privacy (PP)]>; Love, Kelly A. EOP/OVP <[Ex. 6 Personal Privacy (PP)]>; Bowman, Lauren K. EOP/WHO  
<[Ex. 6 Personal Privacy (PP)]>; Porter, Macaulay V. EOP/OVP <[Ex. 6 Personal Privacy (PP)]>; O'Malley, Devin M.  
EOP/OVP <[Ex. 6 Personal Privacy (PP)]>; Miller, Katie R. EOP/OVP <[Ex. 6 Personal Privacy (PP)]>  
**Subject:** RE: Potential EPA Announcement

Hello Ninio,

We will have a document for review by you all and OMB tomorrow. I don't have anything from our enforcement office yet. I just wanted to give a heads up that this was coming.

**From:** Fetalvo, Ninio J. EOP/OVP [Ex. 6 Personal Privacy (PP)]  
**Sent:** Tuesday, March 24, 2020 6:31 PM  
**To:** Syrek, Tori Q. EOP/WHO [Ex. 6 Personal Privacy (PP)]; Woods, Andrea <Woods.Andrea@epa.gov>  
**Cc:** Henning, Alexa A. EOP/WHO [Ex. 6 Personal Privacy (PP)]; Daravi, Roma S. EOP/WHO [Ex. 6 Personal Privacy (PP)]; Love, Kelly A. EOP/OVP [Ex. 6 Personal Privacy (PP)]; Bowman, Lauren K. EOP/WHO [Ex. 6 Personal Privacy (PP)]; Porter, Macaulay V. EOP/OVP [Ex. 6 Personal Privacy (PP)]; Schiermeyer, Corry <schiermeyer.corry@epa.gov>; O'Malley, Devin M. EOP/OVP [Ex. 6 Personal Privacy (PP)]; Miller, Katie R. EOP/OVP [Ex. 6 Personal Privacy (PP)]  
**Subject:** RE: Potential EPA Announcement

Thanks Tori.

Hi Andrea—Can you provide more information on what you would announce?

---

**From:** Syrek, Tori Q. EOP/WHO [Ex. 6 Personal Privacy (PP)]  
**Sent:** Tuesday, March 24, 2020 6:29 PM  
**To:** Woods, Andrea <Woods.Andrea@epa.gov>  
**Cc:** Henning, Alexa A. EOP/WHO [Ex. 6 Personal Privacy (PP)]; Daravi, Roma S. EOP/WHO [Ex. 6 Personal Privacy (PP)]; Love, Kelly A. EOP/OVP [Ex. 6 Personal Privacy (PP)]; Bowman, Lauren K. EOP/WHO [Ex. 6 Personal Privacy (PP)]; Porter, Macaulay V. EOP/OVP [Ex. 6 Personal Privacy (PP)]; Schiermeyer, Corry <schiermeyer.corry@epa.gov>; Fetalvo, Ninio J. EOP/OVP [Ex. 6 Personal Privacy (PP)]; O'Malley, Devin M. EOP/OVP [Ex. 6 Personal Privacy (PP)]; Miller, Katie R. EOP/OVP [Ex. 6 Personal Privacy (PP)]  
**Subject:** Re: Potential EPA Announcement

Hi Andrea,

Looping in OVPs office who can give you guidance on the below.

Tori

On Mar 24, 2020, at 3:05 PM, Woods, Andrea <Woods.Andrea@epa.gov> wrote:

Hi All,

Either tomorrow or Thursday, EPA is going to be announcing revised compliance guidance for a variety of industries due to COVID-19. We have been receiving a significant number of press inquiries on this over the past few days, so Administrator Wheeler would like to do some media surrounding the announcement.

We don't have much detail on timing or specifics of the guidance just yet, but I can share that as soon as we have more info. Our initial thoughts for media is to do a press roundtable with a handful of print reporters who cover our compliance issues regularly and then possibly one to two regional radio hits. Please let us know if you have any thoughts on this – or if it creates any issues on your end.

Thanks!  
Andrea

**Andrea Woods**  
Deputy Press Secretary  
U.S. Environmental Protection Agency  
Office of Public Affairs  
202-564-2010

**To:** Bodine, Susan[bodine.susan@epa.gov]  
**Cc:** Bailey-Morton, Ethel[Bailey-Morton.Ethel@epa.gov]  
**From:** Loving, Shanita[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=439CE9C2D2104080A1B5908D3402BF20-LOVING, SHANITA]  
**Sent:** Thur 3/19/2020 1:32:22 PM (UTC)  
**Subject:** RE: please set up a call on Friday

Okay, will do.

Thanks,

Shanita Loving  
Program Specialist  
Environmental Protection Agency  
IO of the Assist. Administrator of the Office of Enforcement & Compliance Assurance  
1200 Pennsylvania Ave., NW  
WJC-South, Room 3204  
Washington, DC 20460  
Phone: (202) 564-2440

---

**From:** Bodine, Susan <bodine.susan@epa.gov>  
**Sent:** Thursday, March 19, 2020 9:30 AM  
**To:** Loving, Shanita <Loving.Shanita@epa.gov>  
**Cc:** Bailey-Morton, Ethel <Bailey-Morton.Ethel@epa.gov>  
**Subject:** please set up a call on Friday

With Peter Wright, Brittany Bolen, Ann Idsal, Alex Dunn and Dave Ross (or their designees – they can forward the invite).

Covid-19 and requests for flexibility

Sometime tomorrow. Conference call.

Thanks,

Susan

**From:** Microsoft Outlook[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=MICROSOFTEXCHANGE329E71EC88AE4615BBC36AB6CE41109EF7088051]

**Location:** Ex. 6 Personal Privacy (PP)

**Importance:** Normal  
**Subject:** Meeting Forward Notification: Call Re: Covid-19 and Request for Flexibility  
**Start Time:** Fri 3/20/2020 7:30:00 PM (UTC)  
**End Time:** Fri 3/20/2020 8:15:00 PM (UTC)  
**Required Attendees:** Bodine, Susan

**Your meeting was forwarded**

Eng, Connie has forwarded your meeting request to additional recipients.

**Required Attendees:** Bodine, Susan  
**Meeting**  
Call Re: Covid-19 and Request for Flexibility

**Required Attendees:** Bodine, Susan  
**Required Attendees:** Bodine, Susan  
**Meeting Time**  
Friday, March 20, 2020 3:30 PM-4:15 PM.

**Required Attendees:** Bodine, Susan  
**Required Attendees:** Bodine, Susan  
**Recipients**  
Garvey, Megan

**Required Attendees:** Bodine, Susan  
All times listed are in the following time zone: (UTC-05:00) Eastern Time (US & Canada)

Sent by Microsoft Exchange Server

**To:** Hindin, David[Hindin.David@epa.gov]; Bodine, Susan[bodine.susan@epa.gov]; Dombrowski, John[Dombrowski.John@epa.gov]; Segall, Martha[Segall.Martha@epa.gov]  
**From:** Starfield, Lawrence[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8A89D6CD217D4254A5879ABECB3F314E-STARFIELD, LAWRENCE]  
**Sent:** Thur 3/26/2020 6:54:29 PM (UTC)  
**Subject:** RE: Proposed bridge action for P66 on Kb compliance

**Ex. 5 Deliberative Process (DP)**

Larry

**From:** Hindin, David <Hindin.David@epa.gov>  
**Sent:** Thursday, March 26, 2020 2:41 PM  
**To:** Bodine, Susan <bodine.susan@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Dombrowski, John <Dombrowski.John@epa.gov>; Segall, Martha <Segall.Martha@epa.gov>  
**Subject:** RE: Proposed bridge action for P66 on Kb compliance

**Ex. 5 Deliberative Process (DP)**

**From:** Bodine, Susan <bodine.susan@epa.gov>  
**Sent:** Thursday, March 26, 2020 2:39 PM  
**To:** Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Hindin, David <Hindin.David@epa.gov>; Dombrowski, John <Dombrowski.John@epa.gov>; Segall, Martha <Segall.Martha@epa.gov>  
**Subject:** RE: Proposed bridge action for P66 on Kb compliance

**Ex. 5 Deliberative Process (DP)**

**From:** Starfield, Lawrence <Starfield.Lawrence@epa.gov>  
**Sent:** Thursday, March 26, 2020 12:48 PM  
**To:** Hindin, David <Hindin.David@epa.gov>; Dombrowski, John <Dombrowski.John@epa.gov>; Segall, Martha <Segall.Martha@epa.gov>  
**Cc:** Bodine, Susan <bodine.susan@epa.gov>  
**Subject:** FW: Proposed bridge action for P66 on Kb compliance

**Ex. 5 Deliberative Process (DP)**

**From:** Murray, Suzanne <Suzanne.Murray@haynesboone.com>  
**Sent:** Thursday, March 26, 2020 12:33 PM  
**To:** Starfield, Lawrence <Starfield.Lawrence@epa.gov>  
**Subject:** Proposed bridge action for P66 on Kb compliance

Larry,

We realize that you are inundated with requests now, and would back burner this if it were possible. But, as we discussed before, we are bumping up against compliance deadlines at the end of March. Since we first raised the issue, taking a Kb tank offline now presents additional challenges with personnel and supply chain uncertainties. It also could significantly impact P66’s ability to respond to the Agency’s direction (once it’s issued) on the transition from winter to summer gasoline this year. The COVID response is presenting an entirely separate array of issues, and asking facilities to take tanks out of service after EPA has already determined that that requirement under Kb is antiquated makes little sense now.

My nutshell ask is that EPA issue the required individual AMPs to P66 so that it can be in compliance. As a bridge to the time when

EPA is able to finalize a national AMP, P66 proposes that either the Regions individually or HQ collectively approve the AMPs submitted. I have attached a copy of one of the Region 6 requests; the others mirror that request. The AMP request is based upon several AMPs already approved by EPA and incorporates the most stringent version of the current Kb workgroup proposal. Either in the AMP or in a separate agreement, P66 would agree to reopen the AMPs if the final national AMP contains additional requirements.

As a side note, P66 is still getting different messages and interpretations from different Regions on this issue. One said it will issue the AMP, one said that P66 would have to meet the requirements of WW (which is not part of the Kb proposal and would require the tanks to be taken out of service), and others say they won't act on the requests until HQ issues final guidance.

Just give us a path and we will take that laboring oar. Why would EPA want to add additional uncertainty, exorbitant cost and compliance complexity, and increased environmental impact in this challenging time? Is there more that we can do to move this forward?

Thank you as always for trying to find solutions to this issue and others.

Best,

Suzanne



**Suzanne Murray** | Partner  
suzanne.murray@haynesboone.com | (t) +1 210.978.7433

CONFIDENTIALITY NOTICE: This electronic mail transmission is confidential, may be privileged and should be read or retained only by the intended recipient. If you have received this transmission in error, please immediately notify the sender and delete it from your system.

## Appointment

---

**From:** Wilwerding, Joseph [Wilwerding.Joseph@epa.gov]  
**Sent:** 3/16/2020 8:42:48 PM  
**To:** Wilwerding, Joseph [Wilwerding.Joseph@epa.gov]; Sutin, Elyana [Sutin.Elyana@epa.gov]; Irving, John [Irving.John@epa.gov]; ECAD Directors and Deputies-Designees [ECAD\_Directors\_and\_Deputies-Designees@epa.gov]; Bodine, Susan [bodine.susan@epa.gov]; Starfield, Lawrence [Starfield.Lawrence@epa.gov]; Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]; Koslow, Karin [Koslow.Karin@epa.gov]; Hindin, David [Hindin.David@epa.gov]; Werner, Jacqueline [Werner.Jacqueline@epa.gov]; Dombrowski, John [Dombrowski.John@epa.gov]; Mackey, Cyndy [Mackey.Cyndy@epa.gov]; Leff, Karin [Leff.Karin@epa.gov]; Johnson, Kathleen [Johnson.Kathleen@epa.gov]; Regional Counsels and Deputies [Regional\_Counsels\_and\_Deputies@epa.gov]; Schefski, Kenneth [Schefski.Kenneth@epa.gov]  
**CC:** Dean, Abigail [Dean.Abigail@epa.gov]; Armstrong, Joan [Armstrong.Joan@epa.gov]; Gardner, Allison [Gardner.Allison@epa.gov]; Kowalski, Edward [Kowalski.Edward@epa.gov]; Rodrigues, Cecil [rodrigues.cecil@epa.gov]; Mastro, Donna [Mastro.Donna@epa.gov]; Kemker, Carol [Kemker.Carol@epa.gov]; Quast, Sylvia [Quast.Sylvia@epa.gov]; LaPosta, Dore [LaPosta.Dore@epa.gov]; Davies, Lauris [Davies.Lauris@epa.gov]; Lubbe, Wendy [Lubbe.Wendy@epa.gov]; Chow, James [chow.james@epa.gov]; Nelson, Leverett [nelson.leverett@epa.gov]; Simon, Paul [Simon.Paul@epa.gov]; Melvin, Karen [Melvin.Karen@epa.gov]; Meinhardt, Danielle [meinhardt.danielle@epa.gov]; Guerrero, Carmen [guerrero.carmen@epa.gov]; Busterud, Gretchen [Busterud.Gretchen@epa.gov]; Canzler, Erica [Canzler.Erica@epa.gov]; Humphrey, Leslie [Humphrey.Leslie@epa.gov]; Welton, Patricia [Welton.Patricia@epa.gov]; Marshalonis, Dino [Marshalonis.Dino@epa.gov]; Anderson, Julie [Anderson.Julie@epa.gov]; Russo, Rebecca [Russo.Rebecca@epa.gov]; Skelley, Dana [Skelley.Dana@epa.gov]; Gilley, Anne [Gilley.anne@epa.gov]; Miller, Amy [Miller.Amy@epa.gov]; Anderson, Andrew [anderson.andrew@epa.gov]; Jones, Joel E. [Jones.Joel@epa.gov]; Jerison, Joanna [Jerison.Joanna@epa.gov]; Breneman, Sara [breneman.sara@epa.gov]; Cozad, David [Cozad.David@epa.gov]; Pane, Vickie [Pane.Vickie@epa.gov]; Newman, Keriema [Newman.Keriema@epa.gov]; Thompson, Christopher [Thompson.Christopher@epa.gov]; Smith, Suzanne [Smith.Suzanne@epa.gov]; Shiffman, Cari [Shiffman.Cari@epa.gov]; Mirza, Sabah [Mirza.Sabah@epa.gov]; Seager, Cheryl [Seager.Cheryl@epa.gov]; Porter, Amy [Porter.Amy@epa.gov]; Segall, Martha [Segall.Martha@epa.gov]; Hill, Randy [Hill.Randy@epa.gov]; Duffy, Rick [Duffy.Rick@epa.gov]; Vizard, Elizabeth [Vizard.Elizabeth@epa.gov]; Carbone, Chad [Carbone.Chad@epa.gov]; Trombadore, Claire [Trombadore.Claire@epa.gov]; Palmer, Daniel [Palmer.Daniel@epa.gov]; Pollins, Mark [Pollins.Mark@epa.gov]  
**Subject:** ED/RC COVID-19 Update Call: **Ex. 6 Personal Privacy (PP)** (Dial-in Number)  
**Attachments:** Untitled Attachment; ED/RC COVID-19 Update Call **Ex. 6 Personal Privacy (PP)** (Dial-in Number) ; Untitled Attachment; Untitled Attachment  
**Location:** Conference call  
**Start:** 3/18/2020 7:00:00 PM  
**End:** 3/18/2020 8:00:00 PM  
**Show Time As:** Tentative  
**Recurrence:** Weekly  
every Wednesday from 1:00 PM to 2:00 PM

All, this is a weekly call to address enforcement responses and policies related to COVID-19. Please join us today as we discuss who needs to participate and how this call will be used in the coming weeks. Please see the distribution list for current invitees.

**Ex. 6 Personal Privacy (PP)** (Dial-in Number)

**Ex. 6 Personal Privacy (PP)**



**To:** Bodine, Susan[bodine.susan@epa.gov]  
**From:** Bailey-Morton, Ethel[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=9B33DD651FA04119BE02B7B6B151FF91-BAILEY, ETHEL]  
**Sent:** Fri 3/20/2020 6:03:43 PM (UTC)  
**Subject:** FW: MEETING REQUEST: Meeting with Susan Bodine TOMORROW, March 20th re: COVID-19 and Request for Flexibility

Susan,

Is it ok to add Ken McQueen to this meeting?

---

**From:** Garvey, Megan <garvey.megan@epa.gov>  
**Sent:** Friday, March 20, 2020 1:58 PM  
**To:** Bailey-Morton, Ethel <Bailey-Morton.Ethel@epa.gov>  
**Subject:** FW: MEETING REQUEST: Meeting with Susan Bodine TOMORROW, March 20th re: COVID-19 and Request for Flexibility

Hi, Ethel,

Can we extend this invite to the R6 RA – Ken McQueen?

Megan E. Garvey  
Senior Counselor

Ex. 6 Personal Privacy (PP)

---

**From:** Garvey, Megan  
**Sent:** Friday, March 20, 2020 11:57 AM  
**To:** Loving, Shanita <Loving.Shanita@epa.gov>  
**Subject:** FW: MEETING REQUEST: Meeting with Susan Bodine TOMORROW, March 20th re: COVID-19 and Request for Flexibility

Hi, Shanita,

I am going to cover this call for Doug. Is it possible to extend an invite to Ken McQueen, RA of Region 6?

Thanks, Megan

Megan E. Garvey  
Senior Counselor

Ex. 6 Personal Privacy (PP)

---

**From:** Eng, Connie <Eng.Connie@epa.gov>  
**Sent:** Friday, March 20, 2020 9:56 AM  
**To:** Garvey, Megan <garvey.megan@epa.gov>  
**Cc:** Coxen, Carrie <coxen.carrie@epa.gov>  
**Subject:** RE: MEETING REQUEST: Meeting with Susan Bodine TOMORROW, March 20th re: COVID-19 and Request for Flexibility

Have a great day!

# Connie

.....  
Connie Eng  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave, NW  
William Jefferson Clinton Building North, Room 3309 (MC 1101A)  
Washington, DC 20460  
Phone: 202 564 3279  
Email: [eng.connie@epa.gov](mailto:eng.connie@epa.gov)

Electronic Privacy Notice: This e-mail, and any attachments, contains information that is or may be covered by electronic communications privacy laws, and is also confidential and proprietary in nature. If you are not the intended recipient, please be advised that you are legally prohibited from retaining, using, copying, distributing, or otherwise disclosing this information in any manner. Instead, please reply to the sender that you have received this communication in error, and then immediately delete it. Please advise immediately if you or your employer do not consent to Internet e-mail for messages of this nature.

---

**From:** Loving, Shanita <[Loving.Shanita@epa.gov](mailto:Loving.Shanita@epa.gov)>

**Sent:** Thursday, March 19, 2020 1:26 PM

**To:** Eng, Connie <[Eng.Connrie@epa.gov](mailto:Eng.Connrie@epa.gov)>

**Cc:** Coxen, Carrie <[coxen.carrie@epa.gov](mailto:coxen.carrie@epa.gov)>

**Subject:** RE: MEETING REQUEST: Meeting with Susan Bodine TOMORROW, March 20th re: COVID-19 and Request for Flexibility

Hello,

Please see attached Agenda topic for this meeting.

# Ex. 5 Deliberative Process (DP)

Thanks,

Shanita Loving  
Program Specialist  
Environmental Protection Agency  
IO of the Assist. Administrator of the Office of Enforcement & Compliance Assurance  
1200 Pennsylvania Ave., NW  
WJC-South, Room 3204  
Washington, DC 20460  
Phone: (202) 564-2440

---

**From:** Eng, Connie <[Eng.Connrie@epa.gov](mailto:Eng.Connrie@epa.gov)>

**Sent:** Thursday, March 19, 2020 12:52 PM

**To:** Loving, Shanita <[Loving.Shanita@epa.gov](mailto:Loving.Shanita@epa.gov)>

**Cc:** Coxen, Carrie <[coxen.carrie@epa.gov](mailto:coxen.carrie@epa.gov)>

**Subject:** FW: MEETING REQUEST: Meeting with Susan Bodine TOMORROW, March 20th re: COVID-19 and Request for Flexibility

Hi Shanita,

When you send them over, do include Carrie Coxen.

Thanks again !

Have a great day!

**Connie**

Connie Eng  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave, NW  
William Jefferson Clinton Building North, Room 3309 (MC 1101A)  
Washington, DC 20460  
Phone: 202 564 3279  
Email: [eng.connie@epa.gov](mailto:eng.connie@epa.gov)

Electronic Privacy Notice: This e-mail, and any attachments, contains information that is or may be covered by electronic communications privacy laws, and is also confidential and proprietary in nature. If you are not the intended recipient, please be advised that you are legally prohibited from retaining, using, copying, distributing, or otherwise disclosing this information in any manner. Instead, please reply to the sender that you have received this communication in error, and then immediately delete it. Please advise immediately if you or your employer do not consent to Internet e-mail for messages of this nature.

---

**From:** Loving, Shanita <[Loving.Shanita@epa.gov](mailto:Loving.Shanita@epa.gov)>  
**Sent:** Thursday, March 19, 2020 12:48 PM  
**To:** Eng, Connie <[Eng.Connue@epa.gov](mailto:Eng.Connue@epa.gov)>  
**Subject:** RE: MEETING REQUEST: Meeting with Susan Bodine TOMORROW, March 20th re: COVID-19 and Request for Flexibility

I will get the from Susan and send to you when I receive them.

Thanks,

Shanita Loving  
Program Specialist  
Environmental Protection Agency  
IO of the Assist. Administrator of the Office of Enforcement & Compliance Assurance  
1200 Pennsylvania Ave., NW  
WJC-South, Room 3204  
Washington, DC 20460  
Phone: (202) 564-2440

---

**From:** Eng, Connie <[Eng.Connue@epa.gov](mailto:Eng.Connue@epa.gov)>  
**Sent:** Thursday, March 19, 2020 12:47 PM  
**To:** Loving, Shanita <[Loving.Shanita@epa.gov](mailto:Loving.Shanita@epa.gov)>  
**Subject:** RE: MEETING REQUEST: Meeting with Susan Bodine TOMORROW, March 20th re: COVID-19 and Request for Flexibility

Noted.

Can you forward the Agenda/Discussion topics please.

I will check with Doug if he wants to join.

Thanks

Have a great day!

# Connie

.....  
Connie Eng  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave, NW  
William Jefferson Clinton Building North, Room 3309 (MC 1101A)  
Washington, DC 20460  
Phone: 202 564 3279

ED\_004611\_00002240-00003

OECA COVID-19 2020  
FOIAs\_Production002

Email: [eng.connie@epa.gov](mailto:eng.connie@epa.gov)

Electronic Privacy Notice: This e-mail, and any attachments, contains information that is or may be covered by electronic communications privacy laws, and is also confidential and proprietary in nature. If you are not the intended recipient, please be advised that you are legally prohibited from retaining, using, copying, distributing, or otherwise disclosing this information in any manner. Instead, please reply to the sender that you have received this communication in error, and then immediately delete it. Please advise immediately if you or your employer do not consent to Internet e-mail for messages of this nature.

---

**From:** Loving, Shanita <[Loving.Shanita@epa.gov](mailto:Loving.Shanita@epa.gov)>

**Sent:** Thursday, March 19, 2020 12:37 PM

**To:** Eng, Connie <[Eng.Connie@epa.gov](mailto:Eng.Connie@epa.gov)>

**Subject:** RE: MEETING REQUEST: Meeting with Susan Bodine TOMORROW, March 20th re: COVID-19 and Request for Flexibility

I was asked by Susan Bodine to include him in as optional.

Thanks,

Shanita Loving  
Program Specialist  
Environmental Protection Agency  
IO of the Assist. Administrator of the Office of Enforcement & Compliance Assurance  
1200 Pennsylvania Ave., NW  
WJC-South, Room 3204  
Washington, DC 20460  
Phone: (202) 564-2440

---

**From:** Eng, Connie <[Eng.Connie@epa.gov](mailto:Eng.Connie@epa.gov)>

**Sent:** Thursday, March 19, 2020 12:35 PM

**To:** Loving, Shanita <[Loving.Shanita@epa.gov](mailto:Loving.Shanita@epa.gov)>

**Subject:** RE: MEETING REQUEST: Meeting with Susan Bodine TOMORROW, March 20th re: COVID-19 and Request for Flexibility

You send out the meeting invite for 3.30-4:15pm.

Doug already has a meeting at 4pm and that meeting invite is sent out by another program office.

Please, as I have mentioned, to check in with me to avoid conflicts on the Deputy's calendar.

Thanks very much !

Have a great day!

# Connie

.....  
Connie Eng  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave, NW  
William Jefferson Clinton Building North, Room 3309 (MC 1101A)  
Washington, DC 20460  
Phone: 202 564 3279  
Email: [eng.connie@epa.gov](mailto:eng.connie@epa.gov)

Electronic Privacy Notice: This e-mail, and any attachments, contains information that is or may be covered by electronic communications privacy laws, and is also confidential and proprietary in nature. If you are not the intended recipient, please be advised that you are legally prohibited from retaining, using, copying, distributing, or otherwise disclosing this information in any manner. Instead, please reply to the sender that you have received this communication in error, and then immediately delete it. Please advise immediately if you or your employer do not consent to Internet e-mail for messages of this nature.

---

**From:** Eng, Connie

**Sent:** Thursday, March 19, 2020 10:55 AM

**To:** Loving, Shanita <[Loving.Shanita@epa.gov](mailto:Loving.Shanita@epa.gov)>

**Subject:** RE: MEETING REQUEST: Meeting with Susan Bodine TOMORROW, March 20th re: COVID-19 and Request for Flexibility

No, his calendar is packed tomorrow.

Pls let them know that the Deputy is available Monday, 3/23 (4:15-5pm) or Tuesday, 3/24 (3:30-4:15pm).

Thanks Shanita !

Have a great day!

# Connie

---

Connie Eng

U.S. Environmental Protection Agency

1200 Pennsylvania Ave, NW

William Jefferson Clinton Building North, Room 3309 (MC 1101A)

Washington, DC 20460

Phone: 202 564 3279

Email: [eng.connie@epa.gov](mailto:eng.connie@epa.gov)

Electronic Privacy Notice: This e-mail, and any attachments, contains information that is or may be covered by electronic communications privacy laws, and is also confidential and proprietary in nature. If you are not the intended recipient, please be advised that you are legally prohibited from retaining, using, copying, distributing, or otherwise disclosing this information in any manner. Instead, please reply to the sender that you have received this communication in error, and then immediately delete it. Please advise immediately if you or your employer do not consent to Internet e-mail for messages of this nature.

---

**From:** Loving, Shanita <[Loving.Shanita@epa.gov](mailto:Loving.Shanita@epa.gov)>

**Sent:** Thursday, March 19, 2020 10:41 AM

**To:** Eng, Connie <[Eng.Connue@epa.gov](mailto:Eng.Connue@epa.gov)>

**Subject:** RE: MEETING REQUEST: Meeting with Susan Bodine TOMORROW, March 20th re: COVID-19 and Request for Flexibility

Hi Connie,

Does Doug have any flexibility on his schedule tomorrow to join this meeting? Monday may work for Susan, but I am not sure of everyone else schedule.

Shanita Loving

Program Specialist

Environmental Protection Agency

IO of the Assist. Administrator of the Office of Enforcement & Compliance Assurance

1200 Pennsylvania Ave., NW

WJC-South, Room 3204

Washington, DC 20460  
Phone: (202) 564-2440

---

**From:** Eng, Connie <[Eng.Conn@epa.gov](mailto:Eng.Conn@epa.gov)>  
**Sent:** Thursday, March 19, 2020 10:31 AM  
**To:** Loving, Shanita <[Loving.Shanita@epa.gov](mailto:Loving.Shanita@epa.gov)>  
**Subject:** RE: MEETING REQUEST: Meeting with Susan Bodine TOMORROW, March 20th re: COVID-19 and Request for Flexibility

Also, Latonia is not with the DA's office anymore.

So any meeting requests, please kindly reach out to me & I will help to check on the Deputy's availability to avoid any possible conflicts.

Thanks Shanita!  
Appreciate it greatly!

Have a great day!

# Connie

.....  
Connie Eng  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave, NW  
William Jefferson Clinton Building North, Room 3309 (MC 1101A)  
Washington, DC 20460  
Phone: 202 564 3279  
Email: [eng.conn@epa.gov](mailto:eng.conn@epa.gov)

Electronic Privacy Notice: This e-mail, and any attachments, contains information that is or may be covered by electronic communications privacy laws, and is also confidential and proprietary in nature. If you are not the intended recipient, please be advised that you are legally prohibited from retaining, using, copying, distributing, or otherwise disclosing this information in any manner. Instead, please reply to the sender that you have received this communication in error, and then immediately delete it. Please advise immediately if you or your employer do not consent to Internet e-mail for messages of this nature.

---

**From:** Eng, Connie  
**Sent:** Thursday, March 19, 2020 10:16 AM  
**To:** Loving, Shanita <[Loving.Shanita@epa.gov](mailto:Loving.Shanita@epa.gov)>  
**Subject:** FW: MEETING REQUEST: Meeting with Susan Bodine TOMORROW, March 20th re: COVID-19 and Request for Flexibility

Hi Shanita,

Just receive your email from Latonia today.

Please note that Doug is not available during that time slot tomorrow.

The Deputy is available on Monday, 3/23 (4:15-5pm) or Tuesday, 3/24 (3:30-4:15pm).

Thanks

Have a great day!

# Connie

Connie Eng  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave, NW  
William Jefferson Clinton Building North, Room 3309 (MC 1101A)  
Washington, DC 20460  
Phone: 202 564 3279  
Email: [eng.connie@epa.gov](mailto:eng.connie@epa.gov)

Electronic Privacy Notice: This e-mail, and any attachments, contains information that is or may be covered by electronic communications privacy laws, and is also confidential and proprietary in nature. If you are not the intended recipient, please be advised that you are legally prohibited from retaining, using, copying, distributing, or otherwise disclosing this information in any manner. Instead, please reply to the sender that you have received this communication in error, and then immediately delete it. Please advise immediately if you or your employer do not consent to Internet e-mail for messages of this nature.

---

**From:** Cheatham-Strickland, Latonia <[Cheatham-Strickland.Latonia@epa.gov](mailto:Cheatham-Strickland.Latonia@epa.gov)>  
**Sent:** Thursday, March 19, 2020 10:08 AM  
**To:** Eng, Connie <[Eng.Connie@epa.gov](mailto:Eng.Connie@epa.gov)>; Garvey, Megan <[garvey.megan@epa.gov](mailto:garvey.megan@epa.gov)>  
**Cc:** Benevento, Douglas <[benevento.douglas@epa.gov](mailto:benevento.douglas@epa.gov)>  
**Subject:** Fwd: MEETING REQUEST: Meeting with Susan Bodine TOMORROW, March 20th re: COVID-19 and Request for Flexibility

Good Morning,

I hope you guys are safe, and your families are well. A request from OECA to meet with Doug tomorrow.

Best Regards,

Latonia

Latonia M. Cheatham Strickland  
Special Assistant  
Phone: 202-564-7930  
Email: [Cheatham-Strickland.Latonia@epa.gov](mailto:Cheatham-Strickland.Latonia@epa.gov)  
Begin forwarded message:

**From:** "Loving, Shanita" <[Loving.Shanita@epa.gov](mailto:Loving.Shanita@epa.gov)>  
**Date:** March 19, 2020 at 9:54:16 AM EDT  
**To:** "Rakosnik, Delaney" <[rakosnik.delaney@epa.gov](mailto:rakosnik.delaney@epa.gov)>, "Hill, Teresa" <[Hill.Teresa@epa.gov](mailto:Hill.Teresa@epa.gov)>, "Kenely, Caroline" <[Kenely.Caroline@epa.gov](mailto:Kenely.Caroline@epa.gov)>, "Penman, Crystal" <[Penman.Crystal@epa.gov](mailto:Penman.Crystal@epa.gov)>, "Mutz, John (Fletcher)" <[mutz.john@epa.gov](mailto:mutz.john@epa.gov)>, "Inge, Carolyn" <[Inge.Carolyn@epa.gov](mailto:Inge.Carolyn@epa.gov)>, "Bolen, Derrick" <[bolen.derrick@epa.gov](mailto:bolen.derrick@epa.gov)>, "Picone, Kaitlin" <[Picone.Kaitlin@epa.gov](mailto:Picone.Kaitlin@epa.gov)>, "Love, Shea" <[love.shea@epa.gov](mailto:love.shea@epa.gov)>, "Cheatham-Strickland, Latonia" <[Cheatham-Strickland.Latonia@epa.gov](mailto:Cheatham-Strickland.Latonia@epa.gov)>  
**Subject:** MEETING REQUEST: Meeting with Susan Bodine TOMORROW, March 20th re: COVID-19 and Request for Flexibility

Good morning,

Please see meeting details below and let me know if your AA/RA would be available for a call tomorrow at 3:30 pm – 4:15 pm est.

**SUBJECT:** COVID-19 and Request for Flexibility

**WHEN:** Friday, March 20<sup>th</sup>

**TIME:** 3:30 – 4:15 pm

**DURATION:** 45 min

**ATTENDEES:** Peter Wright, Brittany Bolen, Ann Idsal, Alex Dunn, Dave Ross, Matt Leopold, Doug Benevento, Doug Sopkin (Region 8 RA)

Thanks,

Shanita Loving

Program Specialist

Environmental Protection Agency

IO of the Assist. Administrator of the Office of Enforcement & Compliance Assurance

1200 Pennsylvania Ave., NW

WJC-South, Room 3204

Washington, DC 20460

Phone: (202) 564-2440



**To:** Bodine, Susan[bodine.susan@epa.gov]  
**Cc:** shellem@navista.net[shellem@navista.net]; Doug Parker[dougparker@rpostrategies.com]  
**From:** Brent Fewell[brent.fewell@earthandwatergroup.com]  
**Sent:** Thur 3/26/2020 11:54:04 AM (UTC)  
**Subject:** This morning - EHS2  
[ATT00001.txt](#)  
[EHS2 Amended Agenda 3-26-2020.docx](#)

Good morning, Susan,

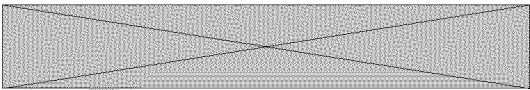
Looking forward to your talk later this morning. Below is the call-in no. Really appreciate for you taking time to speak to our group today, under the circumstances. Obviously, anything you can say re EPA’s COVID-19 response and how the agency/OECA will be dealing with permits and compliance related issues would be helpful.

Brent

Environment, Health, Safety and Security Forum (EHS2)  
March 26, 2020  
Conference Call In Number: **Ex. 6 Personal Privacy (PP)**

- March 26, 2020
- 11:00am – 11:15am Welcome, Antitrust Guidelines and Introductions  
Doug Parker, RPO Strategies and Brent Fewell, Earth & Water Strategies
  - 11:15am – 12:00 pm EPA Enforcement Policy and Priorities  
Susan Bodine, EPA Assistant Administrator, Office of Enforcement & Compliance Assistance
  - 12:00pm – 12:45pm OSHA Update, Including Coronavirus Safety Update  
Eric Conn, Chair OSHA Workplace Safety Group, Conn Maciel Carey
  - 12:45pm – 1:15pm EPA Update/Enforcement Issues Impacting EH&S Management and Next Meeting – June 17, with dinner the evening before  
Brent Fewell and Doug Parker

Brent Fewell, Esq., Founder and Chair  
1455 Pennsylvania Ave., NW, Suite 400, Washington, DC 20004  
(202) 280-6362 (o) | (202) 664-9297 (c) | [www.earthandwatergroup.com](http://www.earthandwatergroup.com)



**LinkedIn**

This e-mail communication (including any attachments) may contain legally privileged and confidential information intended solely for the use of the intended recipient. If you are not the intended recipient, you should immediately stop reading this message and delete it from your system. Any unauthorized reading, distribution, copying or other use of this communication (or its attachments) is strictly prohibited.

**To:** Bodine, Susan[bodine.susan@epa.gov]  
**From:** Starfield, Lawrence[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8A89D6CD217D4254A5879ABECB3F314E-STARFIELD, LAWRENCE]  
**Sent:** Wed 3/25/2020 3:24:56 PM (UTC)  
**Subject:** Note the 11:30 am call

On the Enforcement Discretion paper

Sent from my iPhone

**To:** Bodine, Susan[bodine.susan@epa.gov]  
**From:** Brown, Byron[BBrown@crowell.com]  
**Sent:** Fri 3/20/2020 12:44:45 PM (UTC)  
**Subject:** Enforcement Guidance

Hi Susan – hope you are doing well and staying safe. I just wanted to check whether OECA will be issuing guidance on enforcement and compliance issues that may arise during the ongoing virus response. I keep checking the website but have not seen any updates and nothing enforcement related. Take care. - Byron

**Byron R. Brown**

Office: 202.624.2546

Mobile: 202.486.5483

Email: [bbrown@crowell.com](mailto:bbrown@crowell.com)

**Crowell & Moring LLP** | [www.crowell.com](http://www.crowell.com)

1001 Pennsylvania Avenue NW

Washington, DC 20004

*\* Admitted in Massachusetts Only. Practicing Under the Supervision of D.C. Bar Members.*

This message contains privileged and confidential information. IF IT WAS SENT TO YOU BY MISTAKE, DO NOT READ IT. Instead, please notify the sender (or [postmaster@crowell.com](mailto:postmaster@crowell.com)) by reply e-mail, and delete this e-mail. Unauthorized dissemination, forwarding or copying of this e-mail is strictly prohibited.

**To:** Cook, Steven[cook.steven@epa.gov]; Bodine, Susan[bodine.susan@epa.gov]; Wright, Peter[wright.peter@epa.gov]  
**From:** Gary.Gengel@lw.com[Gary.Gengel@lw.com]  
**Sent:** Sun 3/22/2020 5:18:00 PM (UTC)  
**Subject:** RE: force majeure policy

Thanks so much Steven. Take care all!

Gary P. Gengel

LATHAM & WATKINS LLP  
885 Third Avenue  
New York, NY 10022-4834  
Direct Dial: +1.212.906.4690  
Mobile: +1.609.306.9835  
Email: gary.gengel@lw.com<mailto:gary.gengel@lw.com>

From: Cook, Steven <cook.steven@epa.gov<mailto:cook.steven@epa.gov>>  
Date: Sunday, Mar 22, 2020, 11:39 AM  
To: Gengel, Gary (NY) <Gary.Gengel@lw.com<mailto:Gary.Gengel@lw.com>>, Bodine, Susan <bodine.susan@epa.gov<mailto:bodine.susan@epa.gov>>, Wright, Peter <wright.peter@epa.gov<mailto:wright.peter@epa.gov>>  
Subject: RE: force majeure policy

Gary -

EPA is receiving many of these types of inquiries for a myriad of different situations. EPA is still assessing the next steps to take.

Steven

From: Gary.Gengel@lw.com <Gary.Gengel@lw.com>  
Sent: Friday, March 20, 2020 4:39 PM  
To: Bodine, Susan <bodine.susan@epa.gov>; Cook, Steven <cook.steven@epa.gov>; Wright, Peter <wright.peter@epa.gov>  
Subject: RE: force majeure policy

Sorry, I should have and am now including Peter with my question below.

Clients are scrambling to try to do the right thing under the circumstances.

Thanks!

Gary P. Gengel

LATHAM & WATKINS LLP  
885 Third Avenue  
New York, NY 10022-4834  
Direct Dial: +1.212.906.4690  
Mobile: +1.609.306.9835  
Email: gary.gengel@lw.com<mailto:gary.gengel@lw.com>

From: Gengel, Gary (NY)  
Sent: Friday, March 20, 2020 11:53 AM

To: bodine.susan@epa.gov<mailto:bodine.susan@epa.gov>; Steven Cook  
<cook.steven@epa.gov<mailto:cook.steven@epa.gov>>  
Subject: force majeure policy

Susan and Steven -

I hope you are safe and well in these crazy times . . .

Any chance EPA will be issuing a policy statement on COVID-19 and force majeure in connection with permits, AOCs and consent decrees?

Thanks, and stay safe!

Gary P. Gengel

LATHAM & WATKINS LLP  
885 Third Avenue  
New York, NY 10022-4834  
Direct Dial: +1.212.906.4690  
Mobile: +1.609.306.9835  
Email: gary.gengel@lw.com<mailto:gary.gengel@lw.com>

---

This email may contain material that is confidential, privileged and/or attorney work product for the sole use of the intended recipient. Any review, disclosure, reliance or distribution by others or forwarding without express permission is strictly prohibited. If you are not the intended recipient, please contact the sender and delete all copies including any attachments.

Latham & Watkins LLP or any of its affiliates may monitor electronic communications sent or received by our networks in order to protect our business and verify compliance with our policies and relevant legal requirements. Any personal information contained or referred to within this electronic communication will be processed in accordance with the firm's privacy notices and Global Privacy Standards available at <https://gcc01.safelinks.protection.outlook.com/?url=www.lw.com&data=02%7C01%7Cbodine.susan%40epa.gov%7Cae954d4ca8844b5ae4dc08d7ce84fc78%7C88b378b367484867acf976aacbeca6a7%7C0%7C0%7C637204942878966962&sdata=YBiMG389%2BEXdGxvy1HQ1r3uz7%2FTDEA82hXBiyVYxhRM%3D&reserved=0><<https://gcc01.safelinks.protection.outlook.com/?url=http%3A%2F%2Fwww.lw.com&data=02%7C01%7Cbodine.susan%40epa.gov%7Cae954d4ca8844b5ae4dc08d7ce84fc78%7C88b378b367484867acf976aacbeca6a7%7C0%7C0%7C637204942878966962&sdata=EJy8owSKqPAtoWm807e3xd9fxPRnH5pT9%2F9%2BweXkJ0Q%3D&reserved=0>>.

**To:** Bodine, Susan[bodine.susan@epa.gov]  
**From:** Dunn, Alexandra[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=426D0177EAAB4001A5C85F051565997E-DUNN, ALEXA]  
**Sent:** Tue 3/24/2020 1:16:54 PM (UTC)  
**Subject:** My staff says we don't have anything in

Works on fifra and enforcement. Some of the regions have asked about import NOAs and flexibility but that's all we know of?

I asked Ed Messina to look at the memo close hold.

Alexandra Dapolito Dunn, Esq.  
Assistant Administrator  
Office of Chemical Safety & Pollution Prevention  
U.S. Environmental Protection Agency  
Washington, DC

Sent from my iPhone

**To:** Bodine, Susan[bodine.susan@epa.gov]  
**From:** Hindin, David[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=7D1D8A22DEDC4F2AA58C01FCD00BFEC0-DHINDI02]  
**Sent:** Wed 3/25/2020 11:59:56 AM (UTC)  
**Subject:** Re: ECOS Office Call Wednesday at 9:30am -- I have been invited to provide information on or inspection guidance and upcoming enforcement discretion

Okay. Any sense of when we can share the enforcement flexibilities with ECOS?

*David A Hindin*  
*Director, Office of Compliance*  
*US EPA*  
*202-564-1300*

On Mar 24, 2020, at 9:54 PM, Bodine, Susan <bodine.susan@epa.gov> wrote:

Ok but they will have to understand we are still getting clearances internally so they need to keep you info private.

---

**From:** Hindin, David <Hindin.David@epa.gov>  
**Sent:** Tuesday, March 24, 2020 8:52 PM  
**To:** Bodine, Susan <bodine.susan@epa.gov>  
**Cc:** Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>; Johnson, Kathleen <Johnson.Kathleen@epa.gov>  
**Subject:** ECOS Office Call Wednesday at 9:30am -- I have been invited to provide information on or inspection guidance and upcoming enforcement discretion

Susan:

Jim Macy invited me to give the ECOS Exec Board an update at 9:30am Wednesday. I am sure he would be happy to have you do it, but might be easier for me to do it since I am the communicator and not the decision maker. I will not plan to distribute any documents. I will describe the two documents in broad terms and indicate that ECOS Exec Board opportunity to review quickly could start by Noonish Wednesday, and that we are only looking for ECOS Exec Board input and not wider distribution.

Let me know your thoughts. And if Rosemarie wants to join as well that is good.

*David A. Hindin*  
Director, Office of Compliance  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency, Washington, DC 20460  
Phone 202-329-0271 – mobile only until April 3, 2020

**To:** Bodine, Susan[bodine.susan@epa.gov]  
**Cc:** Hall, Tayoka[Hall.Tayoka@epa.gov]; Hilosky, Nick[Hilosky.Nick@epa.gov]; Breen, Barry[Breen.Barry@epa.gov]; Cook, Steven[cook.steven@epa.gov]  
**From:** Wright, Peter[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=11616A3DB06F4ECEB13EA26C7E6DC1F0-WRIGHT, PET]  
**Sent:** Mon 3/16/2020 8:43:27 PM (UTC)  
**Subject:** RE: Issues with waste & recycling operations

Susan

Ex. 5 Deliberative Process (DP)

Thank you,

Peter

**From:** Bodine, Susan <bodine.susan@epa.gov>  
**Sent:** Monday, March 16, 2020 4:42 PM  
**To:** Wright, Peter <wright.peter@epa.gov>; Breen, Barry <Breen.Barry@epa.gov>; Cook, Steven <cook.steven@epa.gov>  
**Cc:** Hall, Tayoka <Hall.Tayoka@epa.gov>; Hilosky, Nick <Hilosky.Nick@epa.gov>  
**Subject:** RE: Issues with waste & recycling operations

Ex. 5 Deliberative Process (DP)

**From:** Wright, Peter <wright.peter@epa.gov>  
**Sent:** Monday, March 16, 2020 4:38 PM  
**To:** Bodine, Susan <bodine.susan@epa.gov>; Breen, Barry <Breen.Barry@epa.gov>; Cook, Steven <cook.steven@epa.gov>  
**Cc:** Hall, Tayoka <Hall.Tayoka@epa.gov>; Hilosky, Nick <Hilosky.Nick@epa.gov>  
**Subject:** FW: Issues with waste & recycling operations

Deliberative

All:

Ex. 5 Deliberative Process (DP)

I would be glad to discuss.

Peter

**From:** Anne Germain <agermain@wasterecycling.org>  
**Sent:** Monday, March 16, 2020 4:28 PM  
**To:** Wright, Peter <wright.peter@epa.gov>  
**Subject:** Issues with waste & recycling operations

Hi Peter –

I wanted to reach out to see if it would be possible to have a quick discussion about waste and recycling issues during the COVID-19 state of emergency. Landfill and recycling operations are essential public services that could become strained by resource limitations and societal disruptions. As a result, the industry is looking to get a reprieve on certain operational limitations to provide increased flexibility to maintain services.

This call would include myself, our CEO, Darrell Smith, our chief counsel, Jim Riley and our chief of staff, Kirk Sander. Ideally, we would love to speak with you and Administrator Wheeler. Please let me know if you would be able to have a 15 minutes call to discuss our concerns.



Best,  
Anne.

Anne M. Germain, P.E., BCEE  
COO & SVP Regulatory Affairs  
National Waste & Recycling Association  
202-364-3724

**To:** Idsal, Anne[idsal.anne@epa.gov]  
**Sent:** Thur 3/19/2020 8:09:28 PM (UTC)  
**Subject:** FW: Declaration of Emergency and Admin Order - COVID-19.pdf LA  
[Declaration of Emergency and Admin Order - COVID-19.pdf](#)

---

**From:** Starfield, Lawrence <Starfield.Lawrence@epa.gov>  
**Sent:** Thursday, March 19, 2020 2:01 PM  
**To:** Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>; Hindin, David <Hindin.David@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Irving, John <Irving.John@epa.gov>; Johnson, Kathleen <Johnson.Kathleen@epa.gov>  
**Cc:** Mackey, Cyndy <Mackey.Cyndy@epa.gov>; Leff, Karin <Leff.Karin@epa.gov>; Barnet, Henry <Barnet.Henry@epa.gov>  
**Subject:** FW: Declaration of Emergency and Admin Order - COVID-19.pdf LA  
**Importance:** High

See the attached Emergency Order from the Louisiana LDEQ. While it does affirm the need to comply with LDEQ requirements, it extends for 30 days the time for LDEQ-regulated entities to comply with deadlines, including the following:

- a. The time deadlines to report periodic monitoring or to submit other required by permits, regulations, other authorizations, enforcement actions, or se agreements, except for monitoring required by air permits issued under Title IV the Clean Air Act or under the PSD program, only insofar as a facility does n appropriate personnel available due to **COVID-19**;

To consider as part of our enforcement discretion discussion with OCE at 3:30 pm.

Larry  
This message is CONFIDENTIAL, and may contain legally privileged information. If you are not the intended recipient, or believe you received this communication in error, please delete it immediately, do not copy, and notify the sender. Thank you.

STATE OF LOUISIANA  
DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF  
PUBLIC HEALTH EMERGENCY  
EVENT NAME: COVID-19

AGENCY INTEREST NO. 221899

**DECLARATION OF EMERGENCY AND ADMINISTRATIVE ORDER**

Pursuant to the authority granted to me by Louisiana Revised Statutes 30:2001 *et seq.*, and particularly La. R.S. 30:2033 and 2011(D)(6), I hereby make the following findings, declaration and order:

**FINDINGS AND DECLARATION**

1. Beginning on the 11th day of **March**, a **Public Health Emergency, COVID-19** (hereinafter "**COVID-19**") is expected to adversely impact the citizens of the State of Louisiana, causing a widespread public health emergency within the State of Louisiana.
2. By State of Louisiana Proclamation No. **25 JBE 2020**, Louisiana Governor John Bel Edwards, pursuant to the Louisiana Emergency Powers Act, La. R.S. 29:760, *et seq.*, declared on **March 11, 2020**, that a statewide public health emergency exists in the State of Louisiana as a result of the imminent threat posed to Louisiana citizens by **COVID-19**, which has created emergency conditions that threaten the lives and health of the citizens of the State.
3. This Declaration of Emergency and Administrative Order (hereinafter "Order") shall apply statewide (Emergency Area).
4. I find that **COVID-19** has created or will create conditions that require immediate action to prevent serious threats to life or safety throughout the Emergency Area.

WHEREFORE, I hereby declare that an emergency exists, and that the following measures are necessary to prevent serious threats to life or safety throughout the Emergency Area.

## ORDER

Within the Emergency Area:

### **§1. Public Notice and Public Participation Procedures Regarding Proposed Permit Actions**

All scheduled public hearings are postponed until further notice. Accompanying public comment periods will be adjusted accordingly. During this time, public comments will be accepted by LDEQ, preferably via electronic mail or mail.

### **§ 2. Records Management**

Copies of LDEQ documents are usually available online in LDEQ's Electronic Document Management System (EDMS). The EDMS is available at <http://edms.deq.louisiana.gov>.

Additional documents may be available by placing a Public Records Request using the online form at <http://edms.deq.louisiana.gov/prr> or the printable paper form available at <http://deg.louisiana.gov/assets/docs/General/PublicRecordsRequestForm.pdf>. Please contact Records Management with any questions at (225) 219-3171 or [publicrecords@la.gov](mailto:publicrecords@la.gov).

### **§ 3. General Conditions**

a. This Order does not convey any property rights or any rights or privileges other than those specified in this Order.

b. This Order only serves as relief for the duration of this Order from the regulatory and proprietary requirements of the Department, and does not provide relief from the requirements of other federal, state, and local agencies. This Order therefore does not negate the need for the property owner or facility operator to obtain any other required permits or authorizations, nor from the need to comply with all the requirements of those agencies.

**§ 4. General Limitations**

The Department issues this Order solely to address the emergency created by **COVID-19**. This Order shall not be construed to authorize any activity within the jurisdiction of the Department except in accordance with the express terms of this Order.

**§ 5. Electronic Submittals to the Department for Permitting**

The use of LDEQ's physical drop box remains the preferred method for submitting permit applications or other permit-related materials. However, the Department will accept electronic submittals for the duration of this Order. Hard copies shall be submitted to the Department within thirty (30) days of the expiration of this Order. Failure to submit hard copies may result in a suspension or revocation of the permit action. Email submittals are the preferred method of electronic submittals. If the file size exceeds 10 MB, please utilize LDEQ's Dropoff Application process. Appendix A provides guidance as to how electronic submittals should proceed for the duration of this order.

The Department will also accept DocuSign and other e-signatures from responsible officials during this time until the expiration of this Order.

Finally, the Department will accept online payments via the Department's Business Website <https://business.deq.louisiana.gov/Payments> in lieu of checks.

**§ 6. Other Authorizations Required**

Nothing in this Order shall eliminate the necessity for obtaining any other federal, state, or local permits or other authorizations that may be required.

**§ 7. Extension of Time to Comply with Specified Deadlines**

For facilities regulated by the Department in the Emergency Area, this Order extends the time for a period of thirty (30) days to comply with the following specified deadlines that occur between **March 19, 2020**, and the expiration of this Order:

a. The time deadlines to report periodic monitoring or to submit other reports required by permits, regulations, other authorizations, enforcement actions, or settlement agreements, except for monitoring required by air permits issued under Title IV or V of the Clean Air Act or under the PSD program, only insofar as a facility does not have appropriate personnel available due to **COVID-19**;

b. The time deadlines to conduct periodic monitoring required by permits, regulations, other authorizations, enforcement actions, or settlement agreements, except for monitoring required by air permits issued under Title IV or V of the Clean Air Act or under the PSD program, only insofar as a facility does not have appropriate personnel available due to **COVID-19**. Documentation must be maintained and made available to the Department upon request.

c. The time deadlines to file an application for renewal of an existing permit, except for air permits issued under Title V of the Clean Air Act. All renewal applications shall be submitted no later than the expiration date of the existing permit.

**§ 8. Completion of Authorized Activities**

All activities authorized under this Order must be commenced before the expiration of this Order unless otherwise provided in an authorization or permit. The deadline for commencement under any authorization or permit issued under this Order may be extended on a showing that contractors or supplies are not available to commence the work, or if additional time is needed to obtain any required authorization from the Federal Emergency Management Agency, the U.S. Army Corps of Engineers, or other local, state, or federal agencies.

**§ 9. Amendments**

This Order may be amended as required to abate the emergency.

**§ 10. Expiration Date**

This Declaration of Emergency and Administrative Order shall take effect immediately upon execution by the Secretary of the Department, and shall expire at midnight on the thirtieth day after the date of execution set forth below, unless modified or extended by further order.

**DONE AND ORDERED** on this 19<sup>th</sup> day of March, 2020, in Baton Rouge, Louisiana.



\_\_\_\_\_  
Dr. Chuck Carr Brown  
Secretary

## APPENDIX A

### GUIDANCE PROTOCOL FOR ELECTRONIC SUBMITTALS TO THE DEPARTMENT AND ONLINE PAYMENTS RELATED TO PERMITTING

The following protocol is intended to assist the regulated community in electronic submittals to the Department related to permitting for the duration of this Order.

To the extent possible and to assist the Department during this time, please submit files as one PDF file (i.e. please try to convert any Word or Excel files to PDF). This will assist the Department with processing any documentation you are submitting and alleviate any potential loss of documentation.

The preferred method of electronic submittals is via electronic mail. Below you will find the appropriate contacts for submitting documentation below 10 MB file size via email.

To submit large file size documents (over 10 MB), please follow these instructions to utilize LDEQ's Dropoff Application. Should you need to submit a large file to the Department, please begin by sending an email to one of the designated contacts below to request that a Dropoff Link be sent to your email or a specified email account. The appropriate contact listed below will generate a link to LDEQ's Dropoff Application for you to upload your documents. This link will be active for three (3) days, so please promptly upload your documents. The assigned contact below will then download the documents, confirm receipt of the documents via email (although an automatic email should be generated by the system), and route them to the appropriate party for processing at the Department.

Due to the increased use of LDEQ's server, large file size documents should preferably be submitted before 8am or after 6pm.

Moreover, LDEQ will be accepting electronic payments for permit fees at this time in lieu of checks. Please consult <https://business.deq.louisiana.gov/Payments> for further instruction. If you have any issues with online payments please contact Elizabeth Dequeant at [Elizabeth.Dequeant@LA.GOV](mailto:Elizabeth.Dequeant@LA.GOV).



**Contact Information for LDEQ's Permit Application and Administrative Review Group (PAAR):**

If you have questions regarding these procedures please contact Kaylee Fontenot, PAAR Group Supervisor, at [Kaylee.Fontenot@LA.GOV](mailto:Kaylee.Fontenot@LA.GOV).

**Air Permits** – [airpermitapp@LA.GOV](mailto:airpermitapp@LA.GOV)

**Water Permits (including biosolids)** – [waterpermitapp@LA.GOV](mailto:waterpermitapp@LA.GOV)

**Waste Permits (including waste tire)** – [wastepermitapp@LA.GOV](mailto:wastepermitapp@LA.GOV)

**Expedited Permit Applications** – [expeditedpermit@LA.GOV](mailto:expeditedpermit@LA.GOV)

**NOC-1 Forms** – [noc1@LA.GOV](mailto:noc1@LA.GOV)

**FAC Update** – [facupdate@LA.GOV](mailto:facupdate@LA.GOV)

**To:** Bodine, Susan[bodine.susan@epa.gov]  
**From:** Molina, Michael[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D19C1D68DA1A4587866E1850F22A6AE5-MOLINA, MIC]  
**Sent:** Wed 3/11/2020 7:28:55 PM (UTC)  
**Subject:** RE: call for topics for 3/12/2020

**Ex. 5 Deliberative Process (DP)**

MM

**From:** Bodine, Susan <bodine.susan@epa.gov>  
**Sent:** Wednesday, March 11, 2020 3:20 PM  
**To:** Molina, Michael <molina.michael@epa.gov>  
**Subject:** RE: call for topics for 3/12/2020

**Ex. 5 Deliberative Process (DP)**

**From:** Molina, Michael <molina.michael@epa.gov>  
**Sent:** Wednesday, March 11, 2020 2:48 PM  
**To:** Benevento, Douglas <benevento.douglas@epa.gov>; Bennett, Tate <Bennett.Tate@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>; Brazauskas, Joseph <brazauskas.joseph@epa.gov>; Dunlap, David <dunlap.david@epa.gov>; Dunn, Alexandra <dunn.alexandra@epa.gov>; Idsal, Anne <idsal.anne@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>; Leopold, Matt (OGC) <Leopold.Matt@epa.gov>; McIntosh, Chad <mcintosh.chad@epa.gov>; Ross, David P <ross.davidp@epa.gov>; Schiermeyer, Corry <schiermeyer.corry@epa.gov>; White, Elizabeth <white.elizabeth@epa.gov>; Wright, Peter <wright.peter@epa.gov>; Zeckman, David <zeckman.david@epa.gov>  
**Subject:** call for topics for 3/12/2020

thank you all.

MM

Michael D. Molina  
*Acting* Chief of Staff  
U.S. Environmental Protection Agency  
[Molina.Michael@epa.gov](mailto:Molina.Michael@epa.gov)  
(202) 564-3972

**Ex. 6 Personal Privacy (PP)**

**To:** Bodine, Susan[bodine.susan@epa.gov]  
**From:** Sopkin, Gregory[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=1EFB4E9A259F4A879CB730C5BDC685AC-SOPKIN, GRE]  
**Sent:** Thur 3/26/2020 9:10:57 PM (UTC)  
**Subject:** Re: COVID-19 Implications for EPA's Enforcement and Compliance Assurance Program

Thank you Susan. We've already had a call with ND DEQ about the policy and it was well received. Have a call with the rest of R8 DEQs tomorrow and will let you know of any questions/ concerns. Kudos to you and your staff for your hard work on this.

Greg

Sent from my iPhone

On Mar 26, 2020, at 2:18 PM, Bodine, Susan <bodine.susan@epa.gov> wrote:

Colleagues:

As you know, ongoing efforts to limit the spread of COVID-19 have created unprecedented challenges for the regulated community. We remain mindful of the health and safety of the public, as well as our staff, and those of other Federal Agencies, State and Local Governments, Tribes, Regulated Entities, Contractors, and Non-governmental Organizations. We are taking these important considerations into account as we all continue our work to protect human health and the environment. Accordingly, we have developed a [temporary policy](#) regarding EPA enforcement of environmental legal obligations during the COVID-19 pandemic.

EPA will assess the continued need for and scope of this temporary policy on a regular basis and will update it if EPA determines modifications are necessary.

Susan

Susan Parker Bodine  
Assistant Administrator  
Office of Enforcement and Compliance Assurance  
202-564-2440



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

ASSISTANT ADMINISTRATOR  
FOR ENFORCEMENT AND  
COMPLIANCE ASSURANCE

March 26, 2020

**MEMORANDUM**

**SUBJECT:** COVID-19 Implications for EPA's Enforcement and Compliance Assurance Program

**FROM:** Susan Parker Bodine *Susan Parker Bodine*

**TO:** All Governmental and Private Sector Partners

As all of us at the U.S. Environmental Protection Agency adjust to the evolving COVID-19 pandemic, we are first and foremost mindful of the health and safety of the public, as well as our staff, and those of Federal Agencies, State and Local Governments, Tribes, Regulated Entities, Contractors, and Non-governmental Organizations. The agency must take these important considerations into account as we all continue our work to protect human health and the environment. Accordingly, we are announcing the following temporary policy regarding EPA enforcement of environmental legal obligations during this time.

The EPA will exercise the enforcement discretion specified below for noncompliance covered by this temporary policy and resulting from the COVID-19 pandemic, if regulated entities take the steps applicable to their situations, as set forth in this policy. For noncompliance that occurs during the period of time that this temporary policy is in effect, and that results from the COVID-19 pandemic, this policy will apply to such noncompliance in lieu of an otherwise applicable EPA enforcement response policy.

**APPLICABILITY**

This policy will apply retroactively beginning on March 13, 2020. Authorized states or tribes may take a different approach under their own authorities. The EPA will undertake to coordinate with other federal agencies in situations where the EPA shares jurisdiction over a regulated entity's environmental compliance obligations.

The EPA will assess the continued need for and scope of this temporary policy on a regular basis and will update it if the EPA determines modifications are necessary. In order to provide fair and sufficient notice to the public, the EPA will post a notification here <https://www.epa.gov/enforcement/enforcement-policy-guidance-publications>, at least seven days prior to terminating this temporary policy.

The EPA will apply this policy to actions or omissions that occur while this policy is in effect even after the policy terminates.

**SCOPE**

At the EPA, we are cognizant of potential worker shortages due to the COVID-19 pandemic as well as

the travel and social distancing restrictions imposed by both governments and corporations or recommended by the Centers for Disease Control and Prevention to limit the spread of COVID-19. The consequences of the pandemic may affect facility operations and the availability of key staff and contractors and the ability of laboratories to timely analyze samples and provide results. As a result, there may be constraints on the ability of a facility or laboratory to carry out certain activities required by our federal environmental permits, regulations, and statutes. These consequences may affect reporting obligations and milestones set forth in settlements and consent decrees. Finally, these consequences may affect the ability of an operation to meet enforceable limitations on air emissions and water discharges, requirements for the management of hazardous waste, or requirements to ensure and provide safe drinking water. These are very distinct situations that the EPA plans to manage differently, as described below.

The enforcement discretion described in this temporary policy do not apply to any criminal violations or conditions of probation in criminal sentences. Appropriate consideration of potential criminal liability is discussed separately, below.

This policy does not apply to activities that are carried out under Superfund and RCRA Corrective Action enforcement instruments. Such matters will be addressed in a separate communication.

This policy does not apply to imports. We also are especially concerned about pesticide products entering the United States, or produced, manufactured, distributed in the United States, that claim to address COVID-19 impacts. The agency expects to focus on ensuring compliance with requirements applicable to these products to ensure protection of public health. Information relating to FIFRA import requirements can be found here: <https://www.epa.gov/compliance/importing-and-exporting-pesticides-and-devices>. This website will be updated to provide information on how to submit information via email, as may be necessary during the COVID-19 pandemic.

Finally, we realize that the general statements contained in this policy may not address every potential civil violation that may arise as a result of COVID-19. As such, the EPA may provide additional enforcement guidance applicable to specific programs on an ongoing basis and the EPA's self-disclosure program remains available.<sup>1</sup>

## **ENFORCEMENT DISCRETION**

### **I. Civil Violations**

#### **A. General conditions**

All enforcement discretion set forth in this temporary policy is conditioned on the following.

1. Entities should make every effort to comply with their environmental compliance obligations.

---

<sup>1</sup> Regulated entities who voluntarily discover, promptly disclose, expeditiously correct, and take steps to prevent recurrence of potential violations may be eligible for a reduction or elimination of any civil penalties that otherwise might apply. Most violations can be disclosed and processed via the EPA's automated online "eDisclosure" system (*see* <https://www.epa.gov/compliance/epas-edisclosure>). To learn more about the EPA's violation disclosure policies, including conditions for eligibility, please review the EPA's Audit Policy website at <https://www.epa.gov/compliance/epas-audit-policy>. Many states also offer incentives for self-policing; please check with the appropriate state agency for more information.

2. If compliance is not reasonably practicable, facilities with environmental compliance obligations should:
  - a. Act responsibly under the circumstances in order to minimize the effects and duration of any noncompliance caused by COVID-19;
  - b. Identify the specific nature and dates of the noncompliance;
  - c. Identify how COVID-19 was the cause of the noncompliance, and the decisions and actions taken in response, including best efforts to comply and steps taken to come into compliance at the earliest opportunity;
  - d. Return to compliance as soon as possible; and
  - e. Document the information, action, or condition specified in a. through d.

## **B. Routine compliance monitoring and reporting by regulated entities**

The consequences of the pandemic may constrain the ability of regulated entities to perform routine compliance monitoring,<sup>2</sup> integrity testing,<sup>3</sup> sampling,<sup>4</sup> laboratory analysis,<sup>5</sup> training,<sup>6</sup> and reporting or certification.<sup>7</sup>

Entities should use existing procedures to report noncompliance with such routine activities, such as pursuant to an applicable permit, regulation or statute. If no such procedure is applicable, or if reporting is not reasonably practicable due to COVID-19, regulated entities should maintain this information internally and make it available to the EPA or an authorized state or tribe upon request. In general, the EPA does not expect to seek penalties for violations of routine compliance monitoring, integrity testing, sampling, laboratory analysis, training, and reporting or certification obligations in situations where the EPA agrees that COVID-19 was the cause of the noncompliance and the entity provides supporting documentation to the EPA upon request.

After this policy is no longer in effect, the EPA expects full compliance going forward. In general, absent exigent circumstances, the EPA does not plan to ask facilities to “catch-up” with missed monitoring or reporting if the underlying requirement applies to intervals of less than three months. For other monitoring or reports, such as those required on a bi-annual or annual basis, when this policy is no longer in effect, the EPA expects facilities to take reasonable measures to resume compliance activities as soon as possible, including conducting late monitoring or submitting late reports. In some programs, there are sections or codes in the reporting form in which a facility may indicate why it has not conducted the required sampling and monitoring, and the EPA encourages facilities to include such information when submitting any late reports.

Many training classes are offered on-line and such on-line training generally should not be affected by

---

<sup>2</sup> If affected by COVID-19, this category may include, for example, CEMS and stack tests, relative accuracy test audits, LDAR monitoring, fence line monitoring, RICE readings and monitoring, tank and piping inspections, assessments, or stormwater inspections.

<sup>3</sup> If affected by COVID-19, this category may, for example, include tank integrity testing (e.g., API 653) for compliance with certain “good air pollution control practices.”

<sup>4</sup> If affected by COVID-19, this category may include, for example, effluent sampling and testing, as well as cooling tower sampling.

<sup>5</sup> If affected by COVID-19, this category may include, for example, laboratory holding times and turn-around times.

<sup>6</sup> If affected by COVID-19, this category may include, for example, SPCC training, hazardous waste trainings, CAA section 129 renewals, and other annual re-certifications.

<sup>7</sup> If affected by COVID-19, this category may include, for example, reports and certifications associated with delayed activities described above, and late reports under permit or other regulatory obligations, including TRI and greenhouse gas inventory reporting.

travel and social distancing constraints. If practicable, sectors mandated to function with certified operators should maintain normal certification and training practices. If not practicable due to the COVID-19 pandemic, the EPA believes that it is more important to keep experienced, trained operators on the job, even if a training or certification is missed.

If a submission to the EPA requires a “wet” signature of a responsible official, the EPA will accept a digital or other electronic signature. The mere inability to obtain a “wet” signature will not be considered a justification for failure to make a paper submission or certification. We strongly encourage the regulated community use the EPA’s approved electronic reporting mechanisms. For enforcement purposes, the EPA also will accept emailed submissions even if a paper original is required.

### **C. Settlement agreement and consent decree reporting obligations and milestones**

1. With respect to **EPA administrative settlement agreement** reporting obligations and milestones, if, as a result of COVID-19, parties to such settlement agreements anticipate missing enforceable milestones set forth in those documents, parties should utilize the notice procedures set forth in the agreement, including notification of a force majeure, as applicable. For EPA administrative settlement agreements, the EPA intends to treat routine compliance monitoring, integrity testing, sampling, laboratory analysis, training, and associated reporting or certification obligations in the manner described above and will generally not seek stipulated or other penalties for noncompliance with such obligations. The notification should provide the information required by the agreement, which typically will include steps taken to minimize the effects and duration of any noncompliance caused by COVID-19, as well as the information specified under subpart A, above. EPA staff will review these notifications and may contact a party to seek adjustments to a proposed plan of action, pursuant to the agreement.
2. With respect to **consent decrees entered into with the EPA and the U.S. Department of Justice**, these documents are agreements and court orders. EPA staff will coordinate with DOJ to exercise enforcement discretion with regard to stipulated penalties for the routine compliance obligations described in paragraph 1 and will also consult with any co-plaintiffs to seek agreement to this approach. Courts retain jurisdiction over consent decrees and may exercise their own authority. Parties should utilize the notice procedures set forth in the consent decree, including notification of a force majeure, as applicable, with respect to any noncompliance alleged to be caused by COVID-19.
3. Parties should proceed as proposed in their notice to the EPA (and to DOJ for consent decrees) unless and until contacted by the agency (if an EPA administrative settlement) or DOJ (if a judicial consent decree).

### **D. Facility operations**

**The EPA expects all regulated entities to continue to manage and operate their facilities in a manner that is safe and that protects the public and the environment.**

1. Facilities should contact the appropriate implementing authority (EPA region, authorized state, or tribe) if **facility operations impacted by the COVID-19 pandemic may create an acute risk or an imminent threat to human health or the environment**. Even in authorized programs, the EPA strongly encourages facilities, states, and tribes to consult with their EPA regional office on acute risks and imminent threats. If an entity contacts the EPA due to noncompliance that could result in an acute risk or an imminent threat to human health or the environment, the EPA will act as follows.

- a. The EPA's first step will be to consult with the state or tribe, if an authorized program, to discuss measures to minimize or prevent the acute or imminent threat to health or the environment from the COVID-19-caused noncompliance. State or tribal permits or regulations may have provisions that address the situation and result in a return to compliance. Consultation with authorized states or tribes will proceed in accordance with the July 11, 2019 memorandum on Enhancing Effective Partnerships Between EPA and States in Civil Enforcement and Compliance Assurance Work.
  - b. In cases where the EPA implements the program directly:
    - i. The EPA regional office will evaluate whether an applicable permit, statutory, or regulatory provision addresses the situation. The EPA's Office of Enforcement and Compliance Assurance (OECA) will work with program offices on nationwide issues that may arise.
    - ii. If there is no permit/regulatory provision that addresses the situation, the EPA will work with the facility to minimize or prevent the acute or imminent threat to health or the environment from the COVID-19-caused noncompliance and obtain a return to compliance as soon as possible.
    - iii. The EPA will inform the relevant state or tribe of any acute threats and actions taken in response to the noncompliance.
    - iv. The EPA will consider the circumstances, including the COVID-19 pandemic, when determining whether an enforcement response is appropriate.
2. If a facility suffers from **failure of air emission control or wastewater or waste treatment systems or other facility equipment** that may result in exceedances of enforceable limitations on emissions to air or discharges to water, or land disposal, or other unauthorized releases, the facility should notify the implementing authority (EPA regional office or authorized state or tribe) as quickly as possible. The notification also should include information on the pollutants emitted, discharged, discarded, or released; the comparison between the expected emissions or discharges, disposal, or release and any applicable limitation(s); and the expected duration and timing of the exceedance(s) or releases. The EPA will consult with authorized states or tribes, as applicable, in accordance with the July 11, 2019 memorandum on Enhancing Effective Partnerships Between EPA and States in Civil Enforcement and Compliance Assurance Work to determine the appropriate response. Where the EPA implements the program directly, the EPA will evaluate whether the risk posed by the exceedance, disposal, or release is acute or may create an imminent threat to human health or the environment and will follow the steps set forth under paragraph 1.b. above.
  3. If facility operations result in **noncompliance are not already addressed by the EPA above**, regulated entities should take the steps identified under Part I.A. The EPA will consider the circumstances, including the COVID-19 pandemic, when determining whether enforcement response is appropriate.
  4. If a facility is a **generator of hazardous waste** and, due to disruptions caused by the COVID-19 pandemic, is unable to transfer the waste off-site within the time periods required under RCRA to maintain its generator status, the facility should continue to properly label and store such waste and take the steps identified under Part I.A., above. If these steps are met, as an exercise of enforcement discretion, the EPA will treat such entities to be hazardous waste generators, and not treatment, storage and disposal facilities. In addition, as an exercise of enforcement discretion, the EPA will treat Very Small Quantity Generators and Small Quantity Generators as



retaining that status, even if the amount of hazardous waste stored on site exceeds a regulatory volume threshold due to the generator's inability to arrange for shipping of hazardous waste off of the generator's site due to the COVID-19 pandemic.

5. If a facility is an **animal feeding operation**, and, due to disruptions caused by the COVID-19 pandemic, is unable to transfer animals off-site and, solely as a result of the pandemic, meets the regulatory definition of concentrated animal feeding operation (CAFO), as an exercise of enforcement discretion, the EPA will not treat such animal feeding operations as CAFOs (or will not treat small CAFOs as medium CAFOs, or medium CAFOs as large CAFOs). To receive this enforcement discretion an operation must take the steps identified under Part I.A, above.

#### **E. Public water systems regulated under the Safe Drinking Water Act**

Public water systems have a heightened responsibility to protect public health because unsafe drinking water can lead to serious illnesses and access to clean water for drinking and handwashing is critical during the COVID-19 pandemic. Accordingly, the EPA has heightened expectations for public water systems. The EPA expects operators of such systems to continue normal operations and maintenance as well as required sampling to ensure the safety of our drinking water supplies. The EPA expects laboratories performing analysis for water systems to continue to provide timely analysis of samples and results. States play the lead role on drinking water issues, but the EPA also has important drinking water enforcement and oversight responsibilities, including direct implementation responsibilities in some locations.

In the event of worker shortages in the water sector, the EPA will consider continued operation of drinking water systems to be the highest priority. In anticipation of worker shortage and laboratory capacity problems, the EPA considers the following tiers of compliance monitoring to assure the safety of our drinking water supplies and prioritize prevention of acute risks. Of highest priority is monitoring required under National Primary Drinking Water Regulations to protect against microbial pathogens. Additional priorities include nitrate/nitrite and Lead and Copper Rule monitoring followed by contaminants for which the system has been non-compliant. States may wish to adopt similar priorities.

The EPA is working closely with our federal partners, states, and other organizations to ensure resources and personnel are available to assist facilities facing staffing and contractor challenges during this period of COVID-19 response and the Office of Water plans to launch a website with this information. Accordingly, the EPA strongly encourages public water systems to consult with the state and EPA regional offices without delay if issues arise that prevent the normal delivery of safe drinking water and encourages states to continue to work closely with the EPA on measures to address the potential impacts of COVID-19. The EPA also encourages certified drinking water laboratories to consult with the state and the EPA if issues arise that prevent laboratories from conducting analyses of drinking water contaminants.

The EPA will consider the circumstances, including the COVID-19 pandemic, when determining whether any enforcement response is appropriate at public water systems acting in accordance with this subpart.

#### **F. Critical infrastructure**

In situations where a facility is essential critical infrastructure, the EPA may consider a more tailored short-term No Action Assurance, with conditions to protect the public, if the EPA determines it is in the

public interest. Such determinations are made by the OECA Assistant Administrator on a case-by-case basis. The EPA will consider essential the facilities that employ essential critical infrastructure workers as determined by guidance issued by the Cybersecurity and Infrastructure Security Agency.

## **II. State Oversight**

The EPA will continue State Review Framework reviews, and other state program oversight, as practicable, taking into consideration priority work in response to COVID-19. Until such time as dictated by travel and social distancing restrictions, the EPA believes states should take into account the safety and health of their inspectors and facility personnel and use discretion when making decisions to conduct routine inspections, notwithstanding any applicable compliance monitoring strategy. The EPA will take the COVID-19 pandemic into consideration in any review of a state compliance and enforcement program, such as the State Review Framework.

## **III. EPA Actions**

During the pendency of the current COVID-19 exigency, the EPA expects to focus its resources largely on situations that may create an acute risk or imminent threat to public health or the environment, to ensure protection against such risks or threats. All ongoing enforcement matters are continuing.

## **IV. Accidental Releases**

Nothing in this temporary policy relieves any entity from the responsibility to prevent, respond to, or report accidental releases of oil, hazardous substances, hazardous chemicals, hazardous waste, and other pollutants, as required by federal law, or should be read as a willingness to exercise enforcement discretion in the wake of such a release.

## **V. Criminal Violations**

The considerations described above apply to the vast majority of people and businesses who are making good faith efforts to comply with their obligations in this difficult time. Federal environmental statutes generally authorize criminal penalties for knowing conduct that violates the law. In screening cases to determine when to seek prosecutorial assistance from DOJ, the EPA will distinguish violations that facilities know are unavoidable as a result of COVID-19 restrictions from violations that are the result of an intentional disregard for the law. EPA's Criminal Investigative Division remains vigilant and is prepared to pursue violators who demonstrate a criminal *mens rea*.

This temporary policy makes EPA offices and the EPA's governmental and private sector partners, as well as the general public, aware of how the EPA intends to exercise its enforcement discretion with respect to certain compliance situations during the exigencies of the COVID-19 pandemic. This memorandum does not alter any provision of any statute or regulation that contains legally binding requirements, and it is not itself a regulation.

## Appointment

**From:** Wilwerding, Joseph [Wilwerding.Joseph@epa.gov]  
**Sent:** 3/16/2020 8:42:48 PM  
**To:** Wilwerding, Joseph [Wilwerding.Joseph@epa.gov]; Sutin, Elyana [Sutin.Elyana@epa.gov]; Irving, John [Irving.John@epa.gov]; ECAD Directors and Deputies-Designees [ECAD\_Directors\_and\_Deputies-Designees@epa.gov]; Bodine, Susan [bodine.susan@epa.gov]; Starfield, Lawrence [Starfield.Lawrence@epa.gov]; Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]; Koslow, Karin [Koslow.Karin@epa.gov]; Hindin, David [Hindin.David@epa.gov]; Werner, Jacqueline [Werner.Jacqueline@epa.gov]; Dombrowski, John [Dombrowski.John@epa.gov]; Mackey, Cyndy [Mackey.Cyndy@epa.gov]; Leff, Karin [Leff.Karin@epa.gov]; Johnson, Kathleen [Johnson.Kathleen@epa.gov]; Regional Counsels and Deputies [Regional\_Counsels\_and\_Deputies@epa.gov]; Schefski, Kenneth [Schefski.Kenneth@epa.gov]  
**CC:** Dean, Abigail [Dean.Abigail@epa.gov]; Armstrong, Joan [Armstrong.Joan@epa.gov]; Gardner, Allison [Gardner.Allison@epa.gov]; Kowalski, Edward [Kowalski.Edward@epa.gov]; Rodrigues, Cecil [rodrigues.cecil@epa.gov]; Mastro, Donna [Mastro.Donna@epa.gov]; Kemker, Carol [Kemker.Carol@epa.gov]; Quast, Sylvia [Quast.Sylvia@epa.gov]; LaPosta, Dore [LaPosta.Dore@epa.gov]; Davies, Lauris [Davies.Lauris@epa.gov]; Lubbe, Wendy [Lubbe.Wendy@epa.gov]; Chow, James [chow.james@epa.gov]; Nelson, Leverett [nelson.leverett@epa.gov]; Simon, Paul [Simon.Paul@epa.gov]; Melvin, Karen [Melvin.Karen@epa.gov]; Meinhardt, Danielle [meinhardt.danielle@epa.gov]; Guerrero, Carmen [guerrero.carmen@epa.gov]; Busterud, Gretchen [Busterud.Gretchen@epa.gov]; Canzler, Erica [Canzler.Erica@epa.gov]; Humphrey, Leslie [Humphrey.Leslie@epa.gov]; Welton, Patricia [Welton.Patricia@epa.gov]; Marshalonis, Dino [Marshalonis.Dino@epa.gov]; Anderson, Julie [Anderson.Julie@epa.gov]; Russo, Rebecca [Russo.Rebecca@epa.gov]; Skelley, Dana [Skelley.Dana@epa.gov]; Gilley, Anne [Gilley.anne@epa.gov]; Miller, Amy [Miller.Amy@epa.gov]; Anderson, Andrew [anderson.andrew@epa.gov]; Jones, Joel E. [Jones.Joel@epa.gov]; Jerison, Joanna [Jerison.Joanna@epa.gov]; Breneman, Sara [breneman.sara@epa.gov]; Cozad, David [Cozad.David@epa.gov]; Pane, Vickie [Pane.Vickie@epa.gov]; Newman, Keriema [Newman.Keriema@epa.gov]; Thompson, Christopher [Thompson.Christopher@epa.gov]; Smith, Suzanne [Smith.Suzanne@epa.gov]; Shiffman, Cari [Shiffman.Cari@epa.gov]; Mirza, Sabah [Mirza.Sabah@epa.gov]; Seager, Cheryl [Seager.Cheryl@epa.gov]; Porter, Amy [Porter.Amy@epa.gov]; Segall, Martha [Segall.Marta@epa.gov]; Hill, Randy [Hill.Randy@epa.gov]; Duffy, Rick [Duffy.Rick@epa.gov]; Vizard, Elizabeth [Vizard.Elizabeth@epa.gov]; Carbone, Chad [Carbone.Chad@epa.gov]; Trombadore, Claire [Trombadore.Claire@epa.gov]; Palmer, Daniel [Palmer.Daniel@epa.gov]; Pollins, Mark [Pollins.Mark@epa.gov]; Melcher, John [Melcher.John@epa.gov]; OCE DIVISION DIRECTORS AND ASSOCIATE DIRECTORS [OCEDIVISIONDIRECTORSANDASSOCIATEDIRECTORS@epa.gov]; Bellot, Michael [Bellot.Michael@epa.gov]; Fogarty, Johnpc [Fogarty.Johnpc@epa.gov]; McCray, Deborah [Mccray.Deborah@epa.gov]; Tozzi, Lauren [Tozzi.Lauren@epa.gov]; Mckeever, Michele [Mckeever.Michele@epa.gov]; Kudla, Courtney [kudla.courtney@epa.gov]; Anderson, Kate [Anderson.Kate@epa.gov]; Berg, Elizabeth [Berg.Elizabeth@epa.gov]; Holmes, Carol [Holmes.Carol@epa.gov]; Rubini, Suzanne [Rubini.Suzanne@epa.gov]

**Subject:** ED/RC COVID-19 Update Call: + **Ex. 6 Personal Privacy (PP)**  
**Attachments:** Untitled Attachment; ED/RC COVID-19 Update Call: + **Ex. 6 Personal Privacy (PP)** (Dial-in Number) ; Untitled Attachment; Untitled Attachment; Untitled Attachment

**Location:** Conference call

**Start:** 3/18/2020 7:00:00 PM

**End:** 3/18/2020 8:00:00 PM

**Show Time As:** Busy

**Recurrence:** Weekly

Occurs every Wednesday from 1:00 PM to 2:00 PM effective 3/18/2020 until 6/17/2020.

Extending the call series for another month, as proposed. Reminder: this week's call is replaced with the ED/RC 1.5 hr call. Thanks.

**Ex. 6 Personal Privacy (PP)** (Dial-in Number)

Ex. 6 Personal Privacy (PP)

## Appointment

---

**From:** Loving, Shanita [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=439ce9c2d2104080a1b5908d3402bf20-Loving, Shanita]  
**Sent:** 3/23/2020 11:44:21 AM  
**To:** Bodine, Susan [bodine.susan@epa.gov]; Starfield, Lawrence [Starfield.Lawrence@epa.gov]; Irving, John [Irving.John@epa.gov]; Mackey, Cyndy [Mackey.Cyndy@epa.gov]; Hindin, David [Hindin.David@epa.gov]; Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]; Tran, Victoria [tran.victoria@epa.gov]; Koslow, Karin [Koslow.Karin@epa.gov]; Johnson, Kathleen [Johnson.Kathleen@epa.gov]; Leff, Karin [Leff.Karin@epa.gov]; Barnet, Henry [Barnet.Henry@epa.gov]  
**CC:** Randy Hill (Hill.Randy@epa.gov) [Hill.Randy@epa.gov]  
**Subject:** 3-22-20 Version Discussion  
**Location:** CALL ONLY! Call-in Number: **Ex. 6 Personal Privacy (PP)**  
**Start:** 3/23/2020 3:00:00 PM  
**End:** 3/23/2020 3:30:00 PM  
**Show Time As:** Busy

## Appointment

---

**From:** Loving, Shanita [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=439ce9c2d2104080a1b5908d3402bf20-Loving, Shanita]  
**Sent:** 3/19/2020 3:59:46 PM  
**To:** Bodine, Susan [bodine.susan@epa.gov]; Wright, Peter [wright.peter@epa.gov]; Bolen, Brittany [bolen.brittany@epa.gov]; Idsal, Anne [idsal.anne@epa.gov]; Dunn, Alexandra [dunn.alexandra@epa.gov]; Ross, David P [ross.davidp@epa.gov]; Sopkin, Gregory [sopkin.gregory@epa.gov]; Leopold, Matt (OGC) [Leopold.Matt@epa.gov]; Cook, Steven [cook.steven@epa.gov]; Irving, John [Irving.John@epa.gov]; Gunasekara, Mandy [gunasekara.Mandy@epa.gov]  
**CC:** Benevento, Douglas [benevento.douglas@epa.gov]; Dunlap, David [dunlap.david@epa.gov]; McIntosh, Chad [mcintosh.chad@epa.gov]; Cody, Meredith [cody.meredith@epa.gov]; Garvey, Megan [garvey.megan@epa.gov]  
**Subject:** Call Re: Covid-19 and Request for Flexibility  
**Location:** Call-in Number: **Ex. 6 Personal Privacy (PP)**  
**Start:** 3/20/2020 7:30:00 PM  
**End:** 3/20/2020 8:15:00 PM  
**Show Time As:** Busy

## Appointment

---

**From:** Ross, David P [ross.davidp@epa.gov]  
**Sent:** 3/17/2020 12:31:14 AM  
**To:** Ross, David P [ross.davidp@epa.gov]; Bertrand, Charlotte [Bertrand.Charlotte@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]; McLain, Jennifer L. [McLain.Jennifer@epa.gov]; Sawyers, Andrew [Sawyers.Andrew@epa.gov]; Bodine, Susan [bodine.susan@epa.gov]; Fotouhi, David [Fotouhi.David@epa.gov]; Neugeboren, Steven [Neugeboren.Steven@epa.gov]; Schiermeyer, Corry [schiermeyer.corry@epa.gov]; Drinkard, Andrea [Drinkard.Andrea@epa.gov]; Risley, David [Risley.David@epa.gov]; Deziel, Dennis [Deziel.Dennis@epa.gov]; Szaro, Deb [Szaro.Deb@epa.gov]; Moraff, Kenneth [Moraff.Ken@epa.gov]; Lopez, Peter [lopez.peter@epa.gov]; Mugdan, Walter [Mugdan.Walter@epa.gov]; Laureano, Javier [laureano.javier@epa.gov]; Servidio, Cosmo [Servidio.Cosmo@epa.gov]; Esher, Diana [Esher.Diana@epa.gov]; Libertz, Catherine [Libertz.Catherine@epa.gov]; Walker, Mary [walker.mary@epa.gov]; Banister, Beverly [Banister.Beverly@epa.gov]; Gettle, Jeaneanne [Gettle.Jeaneanne@epa.gov]; Thiede, Kurt [thiede.kurt@epa.gov]; Newton, Cheryl [Newton.Cheryl@epa.gov]; Short, Thomas [short.thomas@epa.gov]; McQueen, Ken [McQueen.Ken@epa.gov]; Gray, David [gray.david@epa.gov]; Maguire, Charles [maguire.charles@epa.gov]; Gulliford, Jim [gulliford.jim@epa.gov]; Chu, Ed [Chu.Ed@epa.gov]; Robichaud, Jeffery [Robichaud.Jeffery@epa.gov]; Sopkin, Gregory [sopkin.gregory@epa.gov]; Thomas, Deb [thomas.debrah@epa.gov]; O'Connor, Darcy [oconnor.darcy@epa.gov]; Busterud, John [Busterud.John@epa.gov]; Jordan, Deborah [Jordan.Deborah@epa.gov]; Torres, Tomas [Torres.Tomas@epa.gov]; Hladick, Christopher [hladick.christopher@epa.gov]; Pirzadeh, Michelle [Pirzadeh.Michelle@epa.gov]; Opalski, Dan [Opalski.Dan@epa.gov]  
**CC:** Penman, Crystal [Penman.Crystal@epa.gov]; Aguirre, Janita [Aguirre.Janita@epa.gov]; Tovar, Katlyn [tovar.katlyn@epa.gov]; Mejias, Melissa [mejias.melissa@epa.gov]; Holst, Linda [holst.linda@epa.gov]; Murphy, Thelma (Hamilton) [murphy.thelma@epa.gov]; Dixon, Sean [dixon.sean@epa.gov]; Leopold, Matt (OGC) [Leopold.Matt@epa.gov]  
**Subject:** Water "Sector" Communications  
**Location:** Call in number: **Ex. 6 Personal Privacy (PP)**  
**Start:** 3/17/2020 4:00:00 PM  
**End:** 3/17/2020 5:00:00 PM  
**Show Time As:** Busy

# Ex. 5 Deliberative Process (DP)

## Appointment

---

**From:** Loving, Shanita [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=439ce9c2d2104080a1b5908d3402bf20-Loving, Shanita]  
**Sent:** 3/25/2020 2:52:10 PM  
**To:** Bodine, Susan [bodine.susan@epa.gov]; Starfield, Lawrence [Starfield.Lawrence@epa.gov]; Irving, John [Irving.John@epa.gov]; Johnson, Kathleen [Johnson.Kathleen@epa.gov]; Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]; Koslow, Karin [Koslow.Karin@epa.gov]; Fogarty, Johnpc [Fogarty.Johnpc@epa.gov]; Holmes, Carol [Holmes.Carol@epa.gov]; Amy Porter (Porter.Amy@epa.gov) [Porter.Amy@epa.gov]; Hindin, David [Hindin.David@epa.gov]; Leff, Karin [Leff.Karin@epa.gov]  
**Subject:** Final discussion with OCE on Temporary Enf Policy  
**Location:** CALL ONLY! Call-in Number: Ex. 6 Personal Privacy (PP)  
**Start:** 3/25/2020 3:30:00 PM  
**End:** 3/25/2020 4:00:00 PM  
**Show Time As:** Busy



Appointment

---

**From:** Ex. 6 Personal Privacy (PP)  
**Sent:** 3/24/2020 10:11:18 PM  
**To:** Ex. 6 Personal Privacy (PP); Bodine, Susan [bodine.susan@epa.gov]  
**Subject:** Check-in with OECA  
**Location:** Administrator's Office/ Conference Call: Ex. 6 Personal Privacy (PP); dial-in: Ex. 6 Personal Privacy (PP)  
**Start:** 3/25/2020 8:00:00 PM  
**End:** 3/25/2020 8:30:00 PM  
**Show Time As:** Busy

**To:** Shiffman, Cari[Shiffman.Cari@epa.gov]; OECA Office Directors and Deputy Directors[OECA\_Office\_Directors\_and\_Deputy\_Directors@epa.gov]; OECA-AA-IO[OECAAAIO@epa.gov]; Wilwerding, Joseph[Wilwerding.Joseph@epa.gov]; Dean, Abigail[Dean.Abigail@epa.gov]; Schefski, Kenneth[Schefski.Kenneth@epa.gov]; Bohan, Suzanne[bohan.suzanne@epa.gov]  
**Cc:** Johnson, Catherine M.[johnson.catherinem@epa.gov]; Forster, Rosa[Forster.Rosa@epa.gov]; Thompson, Patricia[thompson.patricia@epa.gov]; Braham, Maurice[Braham.Maurice@epa.gov]; Lucas, Catherine[Lucas.Catherine@epa.gov]; Washington, Barbara[Washington.Barbara@epa.gov]; Emmerson, Caroline[Emmerson.Caroline@epa.gov]; Mckeever, Michele[Mckeever.Michele@epa.gov]; Tran, Victoria[tran.victoria@epa.gov]  
**From:** Mirza, Sabah[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=816BF1F9B67D4892BDAC00DE2EABDA3F-MIRZA, SABAH]  
**Sent:** Tue 3/24/2020 5:03:29 PM (UTC)  
**Subject:** RE: OD Meeting Materials for March 24, 2020  
DRAFT Mar Joint ED RC Call Agenda - V4.docx

Hi all,

Please see draft ED/RC agenda – we will review it at the OD meeting.

Thanks,  
Sabah

~~~~~

Sabah Mirza, Special Assistant  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue NW, 3207E WJC South  
Washington, DC 20460  
Office: 202-564-8176

---

**From:** Mirza, Sabah  
**Sent:** Monday, March 23, 2020 12:01 PM  
**To:** Shiffman, Cari <Shiffman.Cari@epa.gov>; OECA Office Directors and Deputy Directors <OECA\_Office\_Directors\_and\_Deputy\_Directors@epa.gov>; OECA-AA-IO <OECAAAIO@epa.gov>; Wilwerding, Joseph <Wilwerding.Joseph@epa.gov>; Dean, Abigail <Dean.Abigail@epa.gov>; Schefski, Kenneth <Schefski.Kenneth@epa.gov>; Bohan, Suzanne <bohan.suzanne@epa.gov>  
**Cc:** Johnson, Catherine M. <johnson.catherinem@epa.gov>; Forster, Rosa <Forster.Rosa@epa.gov>; Thompson, Patricia <thompson.patricia@epa.gov>; Braham, Maurice <Braham.Maurice@epa.gov>; Lucas, Catherine <Lucas.Catherine@epa.gov>; Washington, Barbara <Washington.Barbara@epa.gov>; Emmerson, Caroline <Emmerson.Caroline@epa.gov>; Mckeever, Michele <Mckeever.Michele@epa.gov>; Tran, Victoria <tran.victoria@epa.gov>  
**Subject:** OD Meeting Materials for March 24, 2020

Hi all,

Please see attached OD Meeting Materials.

Thanks,  
Sabah

~~~~~

Sabah Mirza, Special Assistant  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue NW, 3207E WJC South  
Washington, DC 20460  
Office: 202-564-8176

**To:** Bodine, Susan[bodine.susan@epa.gov]  
**Cc:** Starfield, Lawrence[Starfield.Lawrence@epa.gov]; Kelley, Rosemarie[Kelley.Rosemarie@epa.gov]; Koslow, Karin[Koslow.Karin@epa.gov]  
**From:** Hindin, David[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=7D1D8A22DEDC4F2AA58C01FCD00BFEC0-DHINDI02]  
**Sent:** Tue 3/24/2020 2:55:33 PM (UTC)  
**Subject:** ECOS Update

Susan:

# Ex. 5 Deliberative Process (DP)

I told him the enforcement discretion piece would likely come tonight from you and if there was a change in timing I would let him know.

He was eager to work together. And per the email below, appears that Doug B is also interested in that now, and ECOS list of issues from Don appears to be consistent with what we are hearing.

We can discuss on OD call if you want.

---

**From:** Barbery, Andrea <Barbery.Andrea@epa.gov>  
**Sent:** Tuesday, March 24, 2020 9:27 AM  
**To:** Donald Welsh <dwelsh@ecos.org>; Richardson, RobinH <Richardson.RobinH@epa.gov>  
**Cc:** Macy, Jim <jim.macy@nebraska.gov>; Carolyn Hanson <chanson@ecos.org>  
**Subject:** RE: COVID-19 Operational Issue

Hi Don –

Hope you & the family are doing okay.

I’m pleased to report Doug is interested in joining the officers’ call on a recurring basis. Probably too late to arrange this for tomorrow; what do you advise in terms of scheduling?

Agree it’d be helpful to have a conversation about pandemic response coordination. I think your idea of having EPA join an all-member call is great – if you have a fuller list of the questions and can share, we can figure out who the right folks are, on our end. And then proceed with scheduling?

Thoughts?

Thanks,  
Andrea Barbery, OCIR  
202-564-1397

**From:** Donald Welsh <dwelsh@ecos.org>  
**Sent:** Thursday, March 19, 2020 10:47 AM  
**To:** Richardson, RobinH <Richardson.RobinH@epa.gov>; Barbery, Andrea <Barbery.Andrea@epa.gov>  
**Cc:** jim macy <jim.macy@nebraska.gov>; Carolyn Hanson <chanson@ecos.org>  
**Subject:** COVID-19 Operational Issue

Robin and Andrea:

I am certain that you are very busy dealing with many of the same issues we are. I hope that you are staying safe.

We have begun to hear questions from ECOS members about a number of operational issues during the present emergency. These include possible extensions to due dates for various required submissions, flexibility on required inspections or grant and workplan commitments, the use of virtual inspections and virtual public meetings and a number of other issues.

We want to avoid serially peppering you with questions as we are sure you have your hands full at this time. We want to get your input on what you think might be the best way to coordinate our communication on these questions.

Jim Macy asked me to reiterate his invitation for Doug Benevento to join an upcoming teleconference with ECOS officers which we hold on a weekly basis, and to do so on some regular schedule going forward. We also foresee scheduling an All Members Call on pandemic response, and that could possibly be a convenient forum for discussion of these issues with EPA. Additionally, we have seen that some, and perhaps all, Regions have reached out to their states with initial information on some operational issues.

In the meantime, we will continue to compile a list of the issues that our members are raising to us to share with you when appropriate. Feel free to suggest what might avoid duplication and work best for everyone. Thanks

Don Welsh

--

**Donald S. Welsh**

Executive Director

Environmental Council of the States

***NOTE OUR NEW ADDRESS:***

**1250 H Street NW, Suite 850**

**Washington, DC 20005**

202-266-4929

**To:** Bodine, Susan[bodine.susan@epa.gov]  
**Cc:** Irving, John[Irving.John@epa.gov]  
**From:** Tran, Victoria[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=99FA7AA1484444F98F10029E88F91058-TRAN, VICTO]  
**Sent:** Fri 3/20/2020 6:50:46 PM (UTC)  
**Subject:** RE: 3:30 call on enforcement flexibility  
[Tracking Sheet.docx](#)

Susan,

No problem. I'm not sure if OP Sector sent you an updated snapshot or version of what you sent me last night, but I consolidated my tracking from this week and OP's version into the attachment (for an easy printout, if you'd like).

VT

---

**From:** Bodine, Susan <bodine.susan@epa.gov>  
**Sent:** Friday, March 20, 2020 2:31 PM  
**To:** Tran, Victoria <tran.victoria@epa.gov>  
**Cc:** Irving, John <Irving.John@epa.gov>  
**Subject:** 3:30 call on enforcement flexibility

Vicki, can you join the call to take notes?

Ex. 6 Personal Privacy (PP)

 Code: 

Ex. 6 Personal Privacy (PP)

**To:** Starfield, Lawrence[Starfield.Lawrence@epa.gov]; Bodine, Susan[bodine.susan@epa.gov]  
**From:** Hindin, David[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=7D1D8A22DEDC4F2AA58C01FCD00BFEC0-DHINDI02]  
**Sent:** Wed 3/18/2020 7:17:37 PM (UTC)  
**Subject:** FW: CAA Stationary Source and NPDES Permittee Sampling, Monitoring and Reporting potentially impacted by COVID-19 initial alert

**From:** Hindin, David  
**Sent:** Wednesday, March 18, 2020 3:15 PM  
**To:** ECAD Directors and Deputies-Designees <ECAD\_Directors\_and\_Deputies-Designees@epa.gov>  
**Cc:** Randy Hill (Hill.Randy@epa.gov) <Hill.Randy@epa.gov>; Swift, Jason <Swift.Jason@epa.gov>; Segall, Martha <segall.martha@epa.gov>; Bohan, Suzanne <bohan.suzanne@epa.gov>; VanTil, Barbara <vantil.barbara@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Pollins, Mark <Pollins.Mark@epa.gov>; VanTil, Barbara <vantil.barbara@epa.gov>; Joseph Theis <Theis.Joseph@epa.gov>; Scinta, Robert <scinta.robert@epa.gov>; Mia, Marcia <Mia.Marcia@epa.gov>; Duffy, Rick <Duffy.Rick@epa.gov>; Liz Vizard (Vizard.Elizabeth@epa.gov) <Vizard.Elizabeth@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>  
**Subject:** CAA Stationary Source and NPDES Permittee Sampling, Monitoring and Reporting potentially impacted by COVID-19 initial alert

ECAD Directors and Colleagues

The Office of Compliance is getting a lot of questions from authorized states and regulated entities regarding what happens when a CAA or NPDES regulated source is unable to perform the monitoring required by their permit or the regulations. We will be working closely with OCE as we develop our responses.

# Ex. 5 Deliberative Process (DP)

David A. Hindin  
Director, Office of Compliance  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency, Washington, DC 20460  
Phone: Ex. 6 Personal Privacy (PP) – mobile only until April 3, 2020

**To:** Bodine, Susan[bodine.susan@epa.gov]  
**Cc:** Clark, Jeffrey (ENRD)[jbc1@usdoj.gov]; Brightbill, Jonathan (ENRD)[Jonathan.Brightbill@usdoj.gov];  
bruce.gelber@usdoj.gov[bruce.gelber@usdoj.gov]; Williams, Jean (ENRD)[Jean.Williams@usdoj.gov]  
**From:** Buschbacher, Michael (ENRD)[Michael.Buschbacher@usdoj.gov]  
**Sent:** Tue 3/24/2020 4:03:56 AM (UTC)  
**Subject:** EPA COVID-19 Memo Proposed Edits  
ENRD Proposed Edits to Draft EPA COVID-19 Memo.docx

Dear Susan,

Please find attached ENRD's proposed edits to the COVID-19 email.

Please let me know if you have any questions or run into any issues.

Best regards,  
Michael

Michael B. Buschbacher  
Counsel to the Assistant Attorney General  
U.S. Department of Justice (ENRD)  
michael.buschbacher@usdoj.gov  
(202) 598-1974

**To:** Bodine, Susan[bodine.susan@epa.gov]  
**Cc:** Starfield, Lawrence[Starfield.Lawrence@epa.gov]; Irving, John[Irving.John@epa.gov]; Mirza, Sabah[Mirza.Sabah@epa.gov]; Tran, Victoria[tran.victoria@epa.gov]; Bailey-Morton, Ethel[Bailey-Morton.Ethel@epa.gov]  
**From:** Shiffman, Cari[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=645F74D11EEC4EBA9337CB5734AD6098-SHIFFMAN, CARI]  
**Sent:** Tue 3/24/2020 5:51:55 PM (UTC)  
**Subject:** RE: COVID-19 State of Emergency Declaration – Landfill regulatory flexibility

We should put into CMS, but we don't necessarily need to respond to each broad NAA that comes in if our overall memo will cover. Would like to discuss the strategy tomorrow morning.

Thanks,

U.S. Environmental Protection Agency  
Office of Enforcement and Compliance Assurance  
Office: (202) 564-2898 | Mobile: Ex. 6 Personal Privacy (PP)

---

**From:** Bodine, Susan <bodine.susan@epa.gov>  
**Sent:** Tuesday, March 24, 2020 1:33 PM  
**To:** Shiffman, Cari <Shiffman.Cari@epa.gov>  
**Cc:** Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Irving, John <Irving.John@epa.gov>; Mirza, Sabah <Mirza.Sabah@epa.gov>; Tran, Victoria <tran.victoria@epa.gov>  
**Subject:** FW: COVID-19 State of Emergency Declaration – Landfill regulatory flexibility

Do we need to put this and others like it in CMS and acknowledge? Our broader memo is our substantive response.

---

**From:** Anne Germain <agermain@wasterecycling.org>  
**Sent:** Monday, March 23, 2020 4:36 PM  
**To:** Bodine, Susan <bodine.susan@epa.gov>  
**Cc:** Wheeler, Andrew <wheeler.andrew@epa.gov>; Idsal, Anne <idsal.anne@epa.gov>; Gunasekara, Mandy <gunasekara.Mandy@epa.gov>  
**Subject:** COVID-19 State of Emergency Declaration – Landfill regulatory flexibility

Dear Ms. Bodine –

Please find NWRA's request for regulatory flexibility with respect to rules governing landfills.

Should you have any questions, please feel free to reach out.

Best,  
Anne.

Anne M. Germain, P.E., BCEE  
COO & SVP Regulatory Affairs  
National Waste & Recycling Association  
202-364-3724



March 23, 2020

On March 10, 2020, the Governor of the State of Colorado issued an Executive Order declaring a state of disaster emergency due to the risk of spread of the novel coronavirus, now designated COVID-19.

On March 12, 2020, the Mayor of the City and County of Denver declared a state of local disaster emergency pursuant to C.R.S. § 24-33.5-701, *et seq.*, due to the risk of spread of COVID-19, which, on March 16, 2020, was extended by the City Council for the City and County of Denver through May 11, 2020 due to the risk of spread of COVID-19.

On March 13, 2020, the Executive Director of the Denver Department of Public Health & Environment (“DDPHE”), pursuant to section 24-16 of the Denver Revised Municipal Code, restricted access to certain facilities to minimize the spread of COVID-19 (“March 13 DDPHE Order”).

On March 15, 2020, the Center for Disease Control (“CDC”) recommended that all large events and mass gatherings of 50 persons or more be canceled or postponed for eight weeks to minimize the spread of COVID-19.

On March 16, 2020, the Executive Director of the Denver Department of Public Health & Environment, pursuant to section 24-16 of the Denver Revised Municipal Code, restricted additional activities, including but limited to, onsite consumption of food and beverage in restaurants and banned mass gatherings of 50 persons or more in consistency with the March 15, 2020 CDC recommendations. (“March 16 DDPHE Order”).

On March 16, 2020, the Executive Director of the Colorado Department of Public Health and Environment, pursuant to Colorado Revised Statute §§ 25-1.5-101(1)(a) and 25-1.5-102(1)(a)(I), closed bars, restaurants, theaters, gymnasiums and casinos by Notice of Public Health Order 20-22, which order was amended on March 17, March 18, and March 19, 2020 (“March 16 CDPHE Order”).

On March 18, 2020, the Governor of the State of Colorado issued an Executive Order ordering the suspension of normal in-person instruction at all public and private elementary and secondary schools in the State of Colorado due to the presence of COVID-19 (“March 18 Governor EO”).

On March 18, 2020, the Executive Director of the Colorado Department of Public Health and Environment, pursuant to Colorado Revised Statute §§ 25-1.5-101(1)(a) and 25-1.5-102(1)(a)(I), issued an order implementing social distancing measures, which limits gatherings of individuals to no more than (10) people to slow the spread of the COVID-19 virus (“March 18 CDPHE Order”).

On March 18, 2020, the Executive Director of the Colorado Department of Public Health and Environment, pursuant to Colorado Revised Statute §§ 25-1.5-101(1)(a) and 25-1.5-102(1)(a)(I),

Denver Department of Public Health & Environment  
101 W Colfax Ave, Suite 800 | Denver, CO 80202  
[www.denvergov.org/PublicHealthandEnvironment](http://www.denvergov.org/PublicHealthandEnvironment)  
p. 720-913-1311 | f. 720-865-5531 | @DDPHE

311 | [POCKETGOV.COM](http://POCKETGOV.COM) | [DENVERGOV.ORG](http://DENVERGOV.ORG) | DENVER 8 TV

amended the March 16 CDPHE Order to also include nonessential personal service facilities and racetrack and off-track pari-mutuel wagering facilities, exempt institutions of higher education in the services of meals, clarify that hotel dining services are not exempted other than in room dining services, add a definition of gymnasium, and extend the March 16 CDPHE Order through April 30, 2020 (“March 18 CDPHE Order”).

On March 21, 2020, the Executive Director of the Colorado Department of Public Health and Environment, pursuant to Colorado Revised Statute §§ 25-1.5-101(1)(a) and 25-1.5-102(1)(a)(I), amended the March 18 CDPHE Order to further clarify those activities and functions that are exempted from its social distancing order.

On March 22, 2020, the Governor of the State of Colorado issued an Executive Order D2020-013 ordering non-critical workplaces to reduce their in-person workforce by 50% and to implement tele-work capabilities to the great extent possible due to the presence of COVID-19 in the state (“EO D2020-013”).

On March 22, 2020, the Executive Director of the Colorado Department of Public Health and Environment, pursuant to Colorado Revised Statute §§ 25-1.5-101(1)(a) and 25-1.5-102(1)(a)(I), also issued an order defining critical emergency personnel, infrastructure, government functions, and other activities that are exempt from the directives of EO D2020-013 (“March 22 CDPHE Order”).

### **NECESSITY OF THE ORDER**

This Order is issued based on evidence of increasing occurrence of COVID-19 within Denver, scientific evidence and best practices regarding the most effective approaches to slow the transmission of communicable diseases generally and COVID-19 specifically, and evidence that the age, condition, and health of a significant portion of the population of Denver places it at risk for serious health complications, including death, from COVID-19. Due to the outbreak of the COVID-19 virus in the general public, which is now a pandemic according to the World Health Organization, there is a public health emergency throughout Denver and the State of Colorado.

Making the problem worse, some individuals who contract the COVID-19 virus have no symptoms or have mild symptoms, which means they may not be aware they carry the virus. Because even people without symptoms can transmit the disease, and because evidence shows the disease is easily spread, gatherings can result in preventable transmission of the virus. The scientific evidence shows that at this stage of the emergency, it is essential to slow virus transmission as much as possible to protect the most vulnerable and to prevent the health care system from being overwhelmed. One proven way to slow the transmission is to limit interactions among people to the greatest extent practicable. By reducing the spread of the COVID-19 virus, this Order helps preserve critical and limited healthcare capacity in Denver.

Denver Department of Public Health & Environment  
101 W Colfax Ave, Suite 800 | Denver, CO 80202  
[www.denvergov.org/PublicHealthandEnvironment](http://www.denvergov.org/PublicHealthandEnvironment)  
p. 720-913-1311 | f. 720-865-5531 | @DDPHE

**311 | POCKETGOV.COM | DENVERGOV.ORG | DENVER 8 TV**

This Order also is issued in light of the existence of 148 confirmed cases of COVID-19 in Denver, as well as at least 591 confirmed cases and at least seven deaths in the State of Colorado as of 10:00 a.m. on Saturday, March 23, 2020, including a significant and increasing number of suspected cases of community transmission and likely further significant increases in transmission. Widespread testing for COVID-19 is not yet available but is expected to increase in the coming weeks. This Order is necessary to slow the rate of spread and the Executive Director, in collaboration with the Mayor, will re-evaluate it as further data becomes available.

### INTENT

The intent of this Order is to ensure that the maximum number of people self-isolate in their places of residence to the maximum extent feasible to slow the spread of COVID-19 to the greatest extent possible, while enabling the continuation of essential services, businesses and travel necessary to protect public health and safety, and for the continuity of social and commercial life.

When people need to leave their places of residence, whether to obtain or perform vital services, or to otherwise facilitate authorized activities necessary for continuity of social and commercial life, they should at all times reasonably possible comply with Social Distancing Requirements as defined in Section 6, below. All provisions of this Order should be interpreted to effectuate this intent. Failure to comply with any of the provisions of this Order constitutes an imminent threat and creates an immediate menace to public health.

### ORDER

Hereby finding it is essential that the COVID-19 virus be slowed to protect the ability of public and private health care providers to handle the influx of new patients and safeguard public health, and because the risk of the rapid spread necessitates quick action to protect all members of the community, especially including our members most vulnerable to COVID-19 and also health care providers, this **"STAY AT HOME"** ("Order") requires all individuals anywhere in the City and County of Denver to shelter in place – that is, stay at home – except for certain essential activities and work to provide essential business and government services or perform essential public infrastructure construction, including housing.

Consistent with the Governor's Executive Order declaring a state of disaster emergency, the Mayor's declaration of local disaster emergency, CDC's guidance, and pursuant to the authority granted the Executive Director of the Denver Department of Public Health & Environment in section 24-16 of the Denver Revised Municipal Code, the following is ordered:

Denver Department of Public Health & Environment  
101 W Colfax Ave, Suite 800 | Denver, CO 80202  
[www.denvergov.org/PublicHealthandEnvironment](http://www.denvergov.org/PublicHealthandEnvironment)  
p. 720-913-1311 | f. 720-865-5531 | @DDPHE

311 | [POCKETGOV.COM](http://POCKETGOV.COM) | [DENVERGOV.ORG](http://DENVERGOV.ORG) | DENVER 8 TV

1. All individuals anywhere in the City and County of Denver (“Denver”) are ordered to stay at their place of residence. To the extent individuals are using outdoor spaces, they must at all times as reasonably possible maintain social distancing of at least six feet from any other person when they are outside their residence. All persons may leave their residences only for Essential Activities, Essential Governmental Functions, or to operate Essential Businesses, all as defined in Section 6, below. Individuals experiencing homelessness are exempt from this section, but are strongly urged to obtain shelter, and governmental and other entities are strongly urged to make such shelter available as soon as possible and to the maximum extent practicable (and to use COVID-19 risk mitigation practices in their operation).
2. All businesses with a facility in Denver, except Essential Businesses as defined below in Section 6, are required to cease all activities at facilities located within Denver, except Minimum Basic Operations, as defined in Section 6. For clarity, businesses may also continue operations consisting exclusively of employees or contractors performing activities at their own residences (e.g., working from home). All Essential Businesses are asked to remain open. To the greatest extent feasible, Essential Businesses shall comply with Social Distancing Requirements as defined in Section 6, below, including by maintaining six-foot social distancing for both employees and members of the public, including, but not limited to, when any customers are standing in line.
3. All public and private gatherings of any number of people occurring outside a single household or living unit are prohibited, except for the limited purposes as expressly permitted in Section 6. Nothing in this Order prohibits the gathering of members of a household or living unit.
4. All travel, including, but not limited to, travel on scooter, motorcycle, automobile, or public transit, except Essential Travel and Essential Activities as defined below in Section 6, is prohibited. People may use public transit only for purposes of performing Essential Activities or to travel to and from work to operate Essential Businesses, perform Minimum Basic Operations, or maintain Essential Governmental Functions. People riding on public transit must comply with Social Distancing Requirements as defined in Section 6 below, to the greatest extent feasible. This Order allows travel into or out of the County to perform Essential Activities, operate Essential Businesses, or maintain Essential Governmental Functions.
5. Additionally, the Executive Director of DDPHE strongly encourages all Essential Businesses allowed under this Order to take all available practical measures to safeguard the particularly vulnerable population of individuals aged 60 and over by developing a schedule to establish separate hours of operation so that those individuals can patronize the businesses in a manner that insulates them from other members of the population.

Denver Department of Public Health & Environment  
101 W Colfax Ave, Suite 800 | Denver, CO 80202  
[www.denvergov.org/PublicHealthandEnvironment](http://www.denvergov.org/PublicHealthandEnvironment)  
p. 720-913-1311 | f. 720-865-5531 | @DDPHE

**311 | POCKETGOV.COM | DENVERGOV.ORG | DENVER 8 TV**

**6. Definitions and Exemptions.**

- a. **Essential Activities.** For purposes of this Order, individuals may leave their residence only to perform any of the following “Essential Activities.” But people at high risk of severe illness from COVID-19 and people who are sick are urged to stay in their residence to the extent possible except as necessary to seek medical care.
- i. To engage in activities or perform tasks essential to their health and safety, or to the health and safety of their family or household members (including, but not limited to, pets), such as, by way of example only and without limitation, obtaining medical supplies or medication, visiting a health care professional, or obtaining supplies they need to work from home.
  - ii. To obtain necessary services or supplies for themselves and their family or household members, or to deliver those services or supplies to others, such as, by way of example only and without limitation, canned food, dry goods, fresh fruits and vegetables, pet supply, fresh meats, fish, and poultry, and any other household consumer products, and products necessary to maintain the safety, sanitation, and essential operation of residences.
  - iii. To engage in outdoor activity, provided the individuals comply with Social Distancing Requirements as defined in this Section, such as, by way of example and without limitation, walking, hiking, biking or running. For purposes of outdoor activity, Denver parks will remain open to the public to engage in walking, hiking, biking, running, and similar outdoor activities but all playgrounds, golf courses, tennis courts, basketball courts, picnic areas, and other similar areas conducive to public gathering shall be closed. Additionally, the allowable outdoor activities in this Order do not include group sports and activities that would violate the Social Distancing Requirements as defined in this Section, such as, by way of example and without limitation, football games or volleyball games.
  - iv. To perform work providing essential products and services at the site of an Essential Business or to otherwise carry out activities specifically permitted in this Order, including Minimum Basic Operations.
  - v. To care for a family member or pet in another household.
- b. **Healthcare Operations.** For purposes of this Order, individuals may leave their residence to work for or obtain services at any “Healthcare Operations” including, but not limited to:

Denver Department of Public Health & Environment  
101 W Colfax Ave, Suite 800 | Denver, CO 80202  
[www.denvergov.org/PublicHealthandEnvironment](http://www.denvergov.org/PublicHealthandEnvironment)  
p. 720-913-1311 | f. 720-865-5531 | @DDPHE

**311 | POCKETGOV.COM | DENVERGOV.ORG | DENVER 8 TV**

- i. Hospitals, clinics, and walk-in health facilities
- ii. Medical and dental care, excluding elective procedures
- iii. Research and laboratory services
- iv. Medical wholesale and distribution
- v. Home health care companies, workers, and aides
- vi. Pharmacies,
- vii. Pharmaceutical and biotechnology companies
- viii. Behavioral health care providers
- ix. Nursing homes, residential health care, or congregate care facilities
- x. Medical supplies and equipment manufacturers and providers, or any related and/or ancillary healthcare services
- xi. Veterinary care, livestock services, and all healthcare services provided to animals
- xii. Animal shelters and pet boarding services
- xiii. This exemption shall be construed broadly to avoid any impacts to the delivery of healthcare, broadly defined.
- xiv. "Healthcare Operations" does not include health clubs, fitness and exercise gyms, and similar facilities.

c. **Essential Infrastructure.** For purposes of this Order, individuals may leave their residence to provide any services or perform any work necessary to the operations and maintenance of "Essential Infrastructure," including, but not limited to:

- i. Utilities, including power generation, fuel supply, and transmission
- ii. Water, sewer, gas, and electrical services
- iii. Public works construction
- iv. Construction of housing and housing of affordable housing or housing for individuals experiencing homelessness
- v. Government construction for public infrastructure and facilities
- vi. Construction necessary to support or maintain the operation of any Essential Business
- vii. Skilled trades such as electricians and plumbers
- viii. Other related firms and professionals who provide services necessary to maintain the safety, sanitation, and essential operation of residences
- ix. Airport operations (including passenger and cargo operations and services)
- x. Oil refining, oil and gas operations
- xi. Roads and highways
- xii. Public transportation
- xiii. Solid waste collection and removal
- xiv. Internet and telecommunications systems, including the provision of essential global, national, and local infrastructure for computing services, business infrastructure, communications, and web-based services

Denver Department of Public Health & Environment  
101 W Colfax Ave, Suite 800 | Denver, CO 80202  
[www.denvergov.org/PublicHealthandEnvironment](http://www.denvergov.org/PublicHealthandEnvironment)  
p. 720-913-1311 | f. 720-865-5531 | @DDPHE

311 | [POCKETGOV.COM](http://POCKETGOV.COM) | [DENVERGOV.ORG](http://DENVERGOV.ORG) | DENVER 8 TV



- d. **Essential Governmental Functions.** For purposes of this Order, personnel working for or to support Essential Businesses are categorically exempt from this Order and nothing in this Order shall prohibit any individual from performing or accessing “Essential Governmental Functions,” which means all services needed to ensure the continuing operation of the government agencies and departments, and provide for the health, safety, transportation, and welfare of the public. Therefore, individuals may leave their residence to provide operate, and support “Essential Governmental Functions,” including, but not limited to:
- i. Public safety personnel
  - ii. Law enforcement
  - iii. Fire prevention and response
  - iv. Building code enforcement
  - v. Security personnel
  - vi. Emergency management and response
  - vii. Emergency dispatchers
  - viii. Public and environmental health functions
  - ix. Court personnel
  - x. Military personnel
  - xi. Colorado State Legislature
  - xii. Colorado state, county, and municipal courts
  - xiii. Denver City Council
  - xiv. Other Denver City boards, commissions, and quasi-judicial proceedings
  - xv. All Essential Governmental Functions shall be performed in compliance with Social Distancing Requirements as defined this Section, to the extent possible.
- e. For the purposes of this Order, covered businesses include any for-profit, non-profit, or educational entities, regardless of the nature of the service, the function they perform, or its corporate or entity structure.
- f. **Essential Businesses.** For the purposes of this Order, individuals may leave their residence to work for or obtain services at any “Essential Businesses,” which for purposes of this order means:
- i. Healthcare Operations, Essential Infrastructure, and Essential Governmental Functions;
  - ii. Grocery stores, certified farmers’ markets, farm and produce stands, supermarkets, food banks, convenience stores, and other establishments engaged in the retail sale of canned food, dry goods, fresh fruits and vegetables, pet supply, fresh meats, fish, and poultry, and any other household consumer products (such as cleaning and personal care products). This includes stores that sell groceries

Denver Department of Public Health & Environment  
101 W Colfax Ave, Suite 800 | Denver, CO 80202  
[www.denvergov.org/PublicHealthandEnvironment](http://www.denvergov.org/PublicHealthandEnvironment)  
p. 720-913-1311 | f. 720-865-5531 | @DDPHE

311 | POCKETGOV.COM | DENVERGOV.ORG | DENVER 8 TV

and also sell other non-grocery products, and products necessary to maintaining the safety, sanitation, and essential operation of residences;

- iii. Food and plant cultivation, including farming, livestock, and fishing;
- iv. Businesses that provide food, shelter, and social services, and other necessities of life for economically disadvantaged or otherwise needy individuals;
- v. Newspapers, television, radio, and other media services;
- vi. Gas stations and auto-supply, auto-repair, and related facilities;
- vii. Banks and related financial institutions;
- viii. Hardware stores;
- ix. Plumbers, electricians, exterminators, and other service providers who provide services that are necessary to maintaining the safety, sanitation, and essential operation of residences, Essential Activities, and Essential Businesses;
- x. Businesses providing mailing and shipping services, including post office boxes;
- xi. Educational institutions—including public and private K-12 schools, colleges, and universities—for purposes of facilitating distance learning or performing essential functions, provided that social distancing of six-feet per person is maintained to the greatest extent possible;
- xii. Laundromats, dry cleaners, and laundry service providers;
- xiii. Restaurants and other facilities that prepare and serve food, but only for delivery, take out or drive thru as clarified in the Executive Director's public health order, dated March 16, 2020 and as amended March 17, 2020, and the Governor's Executive Order, also dated March 16, 2020. Schools and other entities that typically provide free food services to students or members of the public may continue to do so under this Order on the condition that the food is provided to students or members of the public on a pick-up and take-away basis only. Restaurants and other facilities that prepare and serve food or beverages at airports may provide on-site dining, but must comply with Social Distancing Requirements. Except for employees and volunteers who must eat meals during their work shift, schools and other entities that provide food services under this exemption shall not permit the food to be eaten at the site where it is provided, or at any other gathering site;

Denver Department of Public Health & Environment  
101 W Colfax Ave, Suite 800 | Denver, CO 80202  
[www.denvergov.org/PublicHealthandEnvironment](http://www.denvergov.org/PublicHealthandEnvironment)  
p. 720-913-1311 | f. 720-865-5531 | @DDPHE

**311 | POCKETGOV.COM | DENVERGOV.ORG | DENVER 8 TV**



- xiv. Businesses that supply products needed for people to work and learn from home, including technology suppliers providing hardware or software essential for communication or connectedness.
- xv. Businesses that supply other essential businesses with the support or supplies necessary to operate;
- xvi. Businesses that ship or deliver groceries, food, goods or services directly to residences;
- xvii. Indoor/outdoor malls are closed except to the extent that they must remain open to allow operation of and access to Essential Businesses;
- xviii. Licensed medical marijuana stores;
- xix. Airlines, taxis, other private transportation providers, and transportation support providing transportation services necessary for Essential Activities and other purposes expressly authorized in this Order;
- xx. Home-based care for seniors, adults, or children. Nanny and babysitting services shall not be permitted under this Order unless the nanny or babysitter (1) resides in the home of the senior, adult, or children for whom they are providing care, (2) provides medical care to the senior, adult, or children, or (3) is providing care in order to allow parents or guardians of a senior, adult or children to work for an Essential Business or perform an Essential Government Function;
- xxi. Residential establishments and facilities, including hotels, motels, and shelters for seniors, adults, and children;
- xxii. Professional services, such as legal, insurance, accounting, or tax preparation services, when necessary to assist in compliance with legally mandated activities;
- xxiii. Faith-based establishments and houses of worship, including but not limited to, churches, synagogues, chapels, and mosques; however, these institutions are strongly encouraged to implement an electronic platform for services and/or more frequent services with smaller congregations.
- xxiv. Childcare facilities providing services that enable employees exempted in this Order to work as permitted. To the extent possible, and in accordance with existing law, childcare facilities must operate under the following mandatory conditions:

Denver Department of Public Health & Environment  
101 W Colfax Ave, Suite 800 | Denver, CO 80202  
[www.denvergov.org/PublicHealthandEnvironment](http://www.denvergov.org/PublicHealthandEnvironment)  
p. 720-913-1311 | f. 720-865-5531 | @DDPHE

**311 | POCKETGOV.COM | DENVERGOV.ORG | DENVER 8 TV**

1. Childcare must be carried out in stable groups of 10 or fewer (“stable” means that the same 10 or fewer children are in the same group each day).
  2. Children shall not change from one group to another.
  3. If more than one group of children is cared for at one facility, each group shall be in a separate room. Groups shall not mix with each other.
  4. Childcare providers shall remain solely with one group of children.
- g. **Minimum Basic Operations.** For the purposes of this Order, “Minimum Basic Operations” include the following activities, so long as employees comply with Social Distancing Requirements as defined this Section, to the extent possible, while carrying out such operations:
- i. The minimum necessary activities to maintain the value of the business’s inventory, ensure security, process payroll and employee benefits, or for related functions.
  - ii. The minimum necessary activities to facilitate employees of the business being able to continue to work remotely from their residences.
  - iii. The minimum necessary activities to facilitate employees of the business being able to continue filling online product orders and to process customer orders remotely.
- h. **Essential Travel.** For the purposes of this Order, “Essential Travel” includes travel for any of the following purposes. Individuals engaged in any Essential Travel must comply with all Social Distancing Requirements as defined in this Section.
- i. Any travel related to the provision of or access to Essential Activities, Essential Governmental Functions, Essential Businesses, or Minimum Basic Operations.
  - ii. Travel to care for elderly, minors, dependents, persons with disabilities, or other vulnerable persons.
  - iii. Travel to or from educational institutions for purposes of receiving materials for distance learning, for receiving meals, and any other related services.
  - iv. Travel to return to a place of residence from outside the jurisdiction.
  - v. Travel required by law enforcement or court order.

Denver Department of Public Health & Environment  
101 W Colfax Ave, Suite 800 | Denver, CO 80202  
[www.denvergov.org/PublicHealthandEnvironment](http://www.denvergov.org/PublicHealthandEnvironment)  
p. 720-913-1311 | f. 720-865-5531 | @DDPHE

311 | [POCKETGOV.COM](http://POCKETGOV.COM) | [DENVERGOV.ORG](http://DENVERGOV.ORG) | DENVER 8 TV

vi. Travel required for non-residents to return to their place of residence outside Denver. Individuals are strongly encouraged to verify that their transportation out of Denver remains available and functional prior to commencing such travel.

i. **Residence.** For purposes of this Order, residences include hotels, motels, shared rental units, and similar facilities.

j. **Social Distancing Requirements.** For purposes of this Order, Social Distancing Requirements includes all of the following: (1) Maintaining at least six-foot social distancing from other individuals; (2) washing hands with soap and water for at least twenty seconds as frequently as possible or using hand sanitizer when hand-sinks are not available, covering coughs or sneezes (into the sleeve or elbow, not hands); (3) regularly cleaning high-touch surfaces; and (4) not shaking hands.

7. Pursuant to section 24-24 of the Denver Revised Municipal Code, it is unlawful for any person to fail to comply with this Order. Any person who fails to comply with this Order may also be subject to a civil penalty of up to nine hundred ninety-nine dollars (\$999.00) per violation. Enforcement actions are intended to be cumulative in nature and Denver may pursue one or more civil, criminal, and administrative actions, fees, fines, sentences, penalties, judgments, and remedies and may do so simultaneously or in succession.

8. This Order shall become effective at 5:00 p.m. on March 24, 2020 and will continue until 5:00 p.m. on April 10, 2020, or until it is extended, rescinded, superseded, or amended in writing by the Executive Director of the Department of Public Health & Environment.

9. If any provision of this Order, or its application to any person or circumstance, is held to be invalid, then the remainder of the Order, including the application of such part or provision to other persons or circumstances, shall not be affected and shall continue in full force and effect. To this end, the provisions of this Order are severable.

10. Questions regarding this Order may be directed to 3-1-1. Within Denver, dial 3-1-1. Outside Denver, dial 720-913-1311.

Issued by:



Robert M. McDonald  
Public Health Administrator, City & County of Denver  
Executive Director, Denver Dept of Public Health & Environment

Denver Department of Public Health & Environment  
101 W Colfax Ave, Suite 800 | Denver, CO 80202  
[www.denvergov.org/PublicHealthandEnvironment](http://www.denvergov.org/PublicHealthandEnvironment)  
p. 720-913-1311 | f. 720-865-5531 | @DDPHE

311 | [POCKETGOV.COM](http://POCKETGOV.COM) | [DENVERGOV.ORG](http://DENVERGOV.ORG) | DENVER 8 TV



**To:** Kelley, Rosemarie[Kelley.Rosemarie@epa.gov]; Bodine, Susan[bodine.susan@epa.gov]; Starfield, Lawrence[Starfield.Lawrence@epa.gov]; Bailey-Morton, Ethel[Bailey-Morton.Ethel@epa.gov]; Loving, Shanita[Loving.Shanita@epa.gov]; Shiffman, Cari[Shiffman.Cari@epa.gov]; Mirza, Sabah[Mirza.Sabah@epa.gov]; Makepeace, Caroline[Makepeace.Caroline@epa.gov]; Johnson, Kathleen[Johnson.Kathleen@epa.gov]; BERMAN, TESSA[Berman.Tessa@epa.gov]  
**Cc:** OECA-OCE-MANAGERS[OECAOCEMANAGERS@epa.gov]; Buterbaugh, Kristin[Buterbaugh.Kristin@epa.gov]; Leff, Karin[Leff.Karin@epa.gov]; Mackey, Cyndy[Mackey.Cyndy@epa.gov]; Hindin, David[Hindin.David@epa.gov]  
**From:** Irving, John[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A45F241B1CE44B8D9C5EA6FC90925313-IRVING, JOH]  
**Sent:** Thur 3/19/2020 7:54:32 PM (UTC)  
**Subject:** RE: OCE Weekly Agenda for 3/19/20

FDA notice re foreign, and now domestic, inspections: <https://www.fda.gov/news-events/press-announcements/coronavirus-covid-19-update-fda-focuses-safety-regulated-products-while-scaling-back-domestic>

John S. Irving  
Deputy Assistant Administrator  
U.S. Environmental Protection Agency  
Office of Enforcement & Compliance Assurance  
Office: (202) 564-2496 / Mobile: Ex. 6 Personal Privacy (PP)

---

**From:** Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>  
**Sent:** Wednesday, March 18, 2020 9:02 PM  
**To:** Bodine, Susan <bodine.susan@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Irving, John <Irving.John@epa.gov>; Bailey-Morton, Ethel <Bailey-Morton.Ethel@epa.gov>; Loving, Shanita <Loving.Shanita@epa.gov>; Shiffman, Cari <Shiffman.Cari@epa.gov>; Mirza, Sabah <Mirza.Sabah@epa.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>; Johnson, Kathleen <Johnson.Kathleen@epa.gov>; BERMAN, TESSA <Berman.Tessa@epa.gov>  
**Cc:** OECA-OCE-MANAGERS <OECAOCEMANAGERS@epa.gov>; Buterbaugh, Kristin <Buterbaugh.Kristin@epa.gov>; Leff, Karin <Leff.Karin@epa.gov>; Mackey, Cyndy <Mackey.Cyndy@epa.gov>; Hindin, David <Hindin.David@epa.gov>  
**Subject:** RE: OCE Weekly Agenda for 3/19/20

Susan—

Attached is our options paper for providing flexibility to entities that may have difficulty complying due the COVID-19.

Rosemarie

---

**From:** Buterbaugh, Kristin <Buterbaugh.Kristin@epa.gov>  
**Sent:** Wednesday, March 18, 2020 3:01 PM  
**To:** Bodine, Susan <bodine.susan@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Irving, John <Irving.John@epa.gov>; Bailey-Morton, Ethel <Bailey-Morton.Ethel@epa.gov>; Loving, Shanita <Loving.Shanita@epa.gov>; Shiffman, Cari <Shiffman.Cari@epa.gov>; Mirza, Sabah <Mirza.Sabah@epa.gov>; OECA-OCE-MANAGERS <OECAOCEMANAGERS@epa.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>; Johnson, Kathleen <Johnson.Kathleen@epa.gov>; BERMAN, TESSA <Berman.Tessa@epa.gov>  
**Cc:** Buterbaugh, Kristin <Buterbaugh.Kristin@epa.gov>  
**Subject:** OCE Weekly Agenda for 3/19/20

The agenda and briefing paper for the OCE Weekly on March 19<sup>th</sup> are attached. Thank you.

**Kristin Buterbaugh**  
Special Assistant  
OECA - Office of Civil Enforcement  
U.S. Environmental Protection Agency  
WJC South 3119C  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460  
(202) 564-4479  
[Buterbaugh.Kristin@epa.gov](mailto:Buterbaugh.Kristin@epa.gov)

*This email may contain deliberative, attorney-client, attorney work product, or otherwise privileged material. Do not release under*

*FOIA without appropriate review. If this email has been received by you in error, you are instructed to delete it from your machine and all storage media whether electronic or hard copy.*

Chris Jahn  
President & CEO



March 20, 2020

The Honorable Andrew Wheeler  
Administrator  
United States Environmental Protection Agency

Dear Mr. Administrator:

On behalf of the member companies of the American Chemistry Council, I request that the appropriate Environmental Protection Agency (EPA) enforcement authorities at the national and regional level be provided guidance on enforcement discretion in addressing potential violations of any time-determined regulatory requirements due to the ongoing coronavirus crisis. In some cases, compliance requirements might be altered to recognize the inherent difficulties in meeting the requirements with a work force that is largely teleworking.

Several examples highlight the need for such enforcement discretion.

Many companies have already instituted strict telework policies for their corporate staffs to promote social distancing. Operations staff have also been instructed to limit contact with persons outside plants, to limit the opportunities for spread of the coronavirus, consistent with the guidance provided by public health officials. These limitations may impact companies that face requirements for agency or agency contractor inspections, witness personnel, or instrument calibration. The performance of these activities requires access to the site where member companies are attempting to limit potential exposure following guidance from Centers for Disease Control, states, or local health departments.

Regulatory requirements like the Risk Management Plan (RMP) under the Clean Air Act (CAA) mandate process hazard assessments (PHA) every 5 years. With the coronavirus restrictions, corporate personnel may not be able to travel to facilities to conduct the PHA on time, as required by the regulation.

Many companies employ third parties to conduct routine compliance testing such as stack testing under the CAA or discharge monitoring and laboratory analysis under existing NPDES programs. These operations and required staff may be hampered or delayed by travel or other restrictions implemented to comply with health departments advice or government declarations. These restrictions may also extend the time required to conduct this testing.

Similarly, export notifications under section 12(b) of the Toxic Substances Control Act must be made within 7 days of forming the intent to export the chemical. Yet corporate policies—again consistent with the guidance provided by public health officials—may limit the ability of corporate employees to travel to obtain necessary signatures certifying compliance, or complete the notices within the timeframe allowed by regulation. These examples are but two across the wide-range of EPA regulatory requirements, compliance with which may be affected.



We strongly recommend that you direct EPA enforcement authorities to exercise their enforcement discretion with respect to regulatory compliance that may be affected by efforts to limit the spread of the coronavirus. In the alternative, we believe the Agency should consider temporary, alternative means of compliance (e.g., such as email deliveries of applicable notices, to be followed by regular notification requirements as soon as practicable thereafter).

In addition, ACC believes that a broad extension (90 to 180 days) of compliance deadlines that do not impact public health or safety should be considered. It would be particularly helpful if EPA would provide guidance to the States to consider similar extensions, particularly in programs (like remediation) that are subject to both federal and State jurisdiction.

We very much appreciate EPA's leadership in responding to the coronavirus. Enforcement discretion, and temporary alternative compliance means, are an appropriate, common sense response to ensure that the regulated community continues to meet its regulatory obligations in the most practical way possible.

Please let me know if ACC or our members can be of any assistance.

Sincerely,

A handwritten signature in black ink, appearing to read 'CJahn', with a long horizontal flourish extending to the right.

Christopher Jahn  
President and Chief Executive Officer

cc: S. Bodine (OECA)  
A. Dunn (OCSP)  
M. Leopold (OGC)  
P. Wright (OLEM)  
D. Ross (OW)  
A. Idsal (OAR)



**To:** Bodine, Susan[bodine.susan@epa.gov]  
**Cc:** Bohan, Suzanne[bohan.suzanne@epa.gov]; Sethuraman, Jag[Sethuraman.Jag@epa.gov]  
**From:** Sopkin, Gregory[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=1EFB4E9A259F4A879CB730C5BDC685AC-SOPKIN, GRE]  
**Sent:** Mon 3/23/2020 9:58:12 PM (UTC)  
**Subject:** FW: Request for Regulatory Relief Necessary to Respond to Novel Coronavirus (COVID-19)  
[UPA Regulatory Relief Request\\_OED.pdf](#)

Susan:

Please see the attached request for regulatory relief from the Utah Petroleum Association. Happy to discuss – thank you.

Greg Sopkin

---

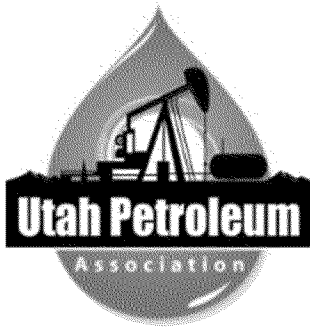
**From:** Jennette King <jking@utahpetroleum.org>  
**Sent:** Monday, March 23, 2020 3:37 PM  
**To:** Rob Simmons <rsimmons@utah.gov>  
**Cc:** Scott Baird <scottbaird@utah.gov>; Sopkin, Gregory <sopkin.gregory@epa.gov>; Sethuraman, Jag <Sethuraman.Jag@epa.gov>; Rikki Hrenko-Browning <rhrenko-browning@utahpetroleum.org>  
**Subject:** Request for Regulatory Relief Necessary to Respond to Novel Coronavirus (COVID-19)

Please see attached letter regarding a **Request for Regulatory Relief Necessary to Respond to Novel Coronavirus (COVID-19)**. If you have any questions or need further information, please contact Rikki Hrenko-Browning at [rhrenko-browning@utahpetroleum.org](mailto:rhrenko-browning@utahpetroleum.org).

Thank you.

**Jennette King**  
**Administrative Assistant**  
536 S. 500 W.  
Salt Lake City, UT 84101  
(801) 703-4444  
[jking@utahpetroleum.org](mailto:jking@utahpetroleum.org)

The content image001.jpg of type has been blocked.



536 South 500 West, Salt Lake City, UT 84101

FUELING UTAH'S GROWTH & PROSPERITY

March 23, 2020

Mr. Rob Simmons  
Governor's Energy Advisor  
Executive Director, Office of Energy Development  
P.O. Box 144845  
Salt Lake City, UT 84114  
[rsimmons@utah.gov](mailto:rsimmons@utah.gov)

Dear Mr. Simmons:

**Re: Request for Regulatory Relief Necessary to Respond to Novel Coronavirus (COVID-19)**

On behalf of the Utah Petroleum Association and our members and pursuant to Governor Gary Herbert's March 6, 2020 declaration of a State of Emergency as part of the State's efforts to respond to the novel coronavirus (COVID-19), this letter requests temporary relief from certain provisions of statutes, rules, orders and permits in an effort to minimize risk of exposure and otherwise respond to COVID-19 without sacrificing the protection of human health and the environment.

UPA's member companies are committed to safe and environmentally responsible operation of its operating sites. To protect both its employees, site contractors, and the general public, the oil and gas industry is seeking to temporarily limit certain on-site activities by personnel as part of its larger COVID-19 response. In order to achieve this goal, some periodic sampling, testing, recordkeeping and reporting activities can and should safely and responsibly be deferred during the present phase of the response, to be conducted or resumed as soon as conditions are appropriate in the response. Based on the current circumstances we anticipate a sixty-day extension is appropriate, to be reviewed in the future if warranted.

Set forth below is a non-exclusive list of provisions and activities identified by the state's oil and gas industry to date for which UPA is seeking necessary relief to enable the industry's response to COVID-19 across the state. This list is intended to provide a general listing of environmental compliance activities and does not include all activities that may be impacted by COVID-19 (e.g. safety, transportation, security, etc.) This list may be revised as the response develops.

Key to the request is the recognition that many employees and consultants will be not be reporting daily to their normal workplaces and will not be traveling to facility locations. Even though we are prepared for or have already implemented solutions that allow many of our personnel to work remotely, it is unprecedented to carry out certain work entirely via remote communications, and indeed impossible to carry out others. As reflected by the list below, the majority of the items reflect a focus on responsibly minimizing onsite activities and lesser access to complete

information due to self-isolation (e.g., employee or contractor personnel held home, sick or quarantined). After the COVID-19 response period it is expected that resumption of regulatory activities may be delayed as multiple facilities compete for limited environmental testing, monitoring and laboratory resources.

1. Periodic certification and reporting:
  - a. Deferred filing of periodic reports
    - i. Examples include emissions inventory, and rule- or permit-required periodic reports
  - b. Filing of reports without the normal signatures (where plant manager or formal designee is unavailable)
  - c. Submittal of reports via email.
2. Deferred permit renewal applications for expiring permits
3. Hazardous waste accumulation:
  - a. Deferral of movements past time limits, including 3-day satellite accumulation time limit and 90-day accumulation time limit
  - b. Delayed reporting
  - c. Deferral of weekly inspections
4. Effluent sampling and reporting:
  - a. Deferred sampling and WET testing
  - b. Deferred filing of periodic reports
  - c. Late lab turn-around time on sample results
  - d. Missed hold-time on samples
  - e. Delayed reporting
5. Fugitive Leak Detection and Repair (LDAR):
  - a. Deferred LDAR monitoring and inspections
  - b. Late repair times
  - c. Late recheck of LDAR component after repair
  - d. Delayed quarterly and annual monitoring
  - e. Deferred component inclusion
  - f. Delayed reporting
6. Soil or groundwater remediation:
  - a. Delayed sampling events
  - b. Delayed drawdown monitoring
  - c. Delayed reporting
7. CEMS and stack/engine tests:
  - a. Late stack/engine tests
  - b. Late RATA or CGA test
  - c. Missed or late CEMS evaluation
  - d. Unable to repair CEMS due to specialized knowledge vested in personnel
  - e. Unable to repair CEMS due to parts unavailability
  - f. Delayed reporting
8. Cooling tower sampling:
  - a. Delayed sampling and analysis

- b. Delayed reporting
- 9. Fenceline monitoring:
  - a. Unable timely to change sample tubes
  - b. Disruptions in lab shipments
  - c. Lab analytical delays
  - d. Delayed reporting
- 10. Deferred tank seal inspections
- 11. Stormwater monitoring
  - a. Delayed sampling and analysis
  - b. Delayed inspections
- 12. Self-audits and NOVs:
  - a. Late Disclosures of Violation and other submittals on pending audits
  - b. Extend period to address notices of violations and come into compliance (e.g. CAERS registrations)
- 13. Fuels reporting
  - a. Reports
  - b. RFS
  - c. RINS

This request covers only those provisions requiring activities that are inconsistent with implementation of the industry's COVID-19 response, while maintaining safe and environmentally responsible operation. If you have any questions about this request, please contact me.

Sincerely,



Rikki Hrenko-Browning

Cc:

Scott Baird ([scottbaird@utah.gov](mailto:scottbaird@utah.gov))  
Greg Sopkin ([sopkin.gregory@epa.gov](mailto:sopkin.gregory@epa.gov))  
Jagadeesen Sethuraman ([sethuraman.jag@epa.gov](mailto:sethuraman.jag@epa.gov))

**To:** Fogarty, Johnpc[Fogarty.Johnpc@epa.gov]; Kelley, Rosemarie[Kelley.Rosemarie@epa.gov]; Koslow, Karin[Koslow.Karin@epa.gov]; Buterbaugh, Kristin[Buterbaugh.Kristin@epa.gov]  
**Cc:** Bodine, Susan[bodine.susan@epa.gov]; Starfield, Lawrence[Starfield.Lawrence@epa.gov]; Irving, John[Irving.John@epa.gov]; Tran, Victoria[tran.victoria@epa.gov]; Mirza, Sabah[Mirza.Sabah@epa.gov]; Bailey-Morton, Ethel[Bailey-Morton.Ethel@epa.gov]  
**From:** Shiffman, Cari[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=645F74D11EEC4EBA9337CB5734AD6098-SHIFFMAN, CARI]  
**Sent:** Mon 3/23/2020 2:08:15 PM (UTC)  
**Subject:** NAA Request re Food Supply and CWA - AX-20-000-4281  
[20-000-4281.pdf](#)

Another NAA request. Will be assigned to you in CMS.

Thanks,

Cari Shiffman, Chief of Staff  
U.S. Environmental Protection Agency  
Office of Enforcement and Compliance Assurance  
Office: (202) 564-2898 | Mobile: Ex. 6 Personal Privacy (PP)

Fri Mar 20 15:56:13 EDT 2020  
"Hope, Brian" <Hope.Brian@epa.gov>  
FW: Barnyard letter to Administrator Wheeler requesting 'no action' assurance  
To: "CMS.OEX" <cms.oex@epa.gov>

---

Reading file

**From:** Scott Yager <syager@beef.org>  
**Sent:** Friday, March 20, 2020 3:53 PM  
**To:** Wheeler, Andrew <wheeler.andrew@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>  
**Cc:** Subramanian, Hema <Subramanian.Hema@epa.gov>; Mills, William T. <mills.williamt@epa.gov>; Striegel, Megan <Striegel.Megan@epa.gov>  
**Subject:** Barnyard letter to Administrator Wheeler requesting 'no action' assurance

Administrator Wheeler,

Please see the attached letter requesting EPA to provide a 'no action' assurance to ensure the continued integrity of our nation's food supply during the pendency of the COVID-19 pandemic. This request is supported by national agricultural groups representing the livestock and poultry industry. Happy to discuss further at your convenience.

**Scott Yager**  
Chief Environmental Counsel  
  
Government Affairs  
**National Cattlemen's Beef Association**

**Center for Public Policy**  
The Pennsylvania Building  
  
1275 Pennsylvania Ave, NW Suite 801  
Washington, DC 20004-1701  
(202) 347-0228 | [syager@beef.org](mailto:syager@beef.org)



March 20, 2020

Administrator Andrew Wheeler  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue NW  
Washington, DC 20460

Administrator Wheeler:

The undersigned agricultural groups thank you and the Administration for your swift action to address concerns surrounding the COVID-19 pandemic. As Americans begin to realize the potential long-term threat this pandemic presents to their personal safety, EPA plays an important role in ensuring that America's farms remain safe. Farms across the nation have closed their gates to visitors and other off-site guests to limit the spread of the virus to essential operational staff at farms and ranches. Respecting this effort, we request that the EPA issue a "no action" assurance, suspending site inspections of Clean Water Act 402 permitted agricultural operations to protect the safety of critical infrastructure workforce employees, including farm workers.

EPA's long-standing policy related to enforcement during emergencies allows the agency to make "no action" assurances in an extremely unusual circumstance where an assurance is clearly necessary to serve the public interest and which no other mechanism can adequately address the concern. The COVID-19 pandemic and its effects are clearly unprecedented. Agricultural workers, as outlined by the Department of Homeland Security, are critical infrastructure workers who need protection by all levels of government. Such protection serves the public interest by ensuring that agricultural workers continue to maintain the American food supply without unnecessary regulatory burden. A "no action" assurance is the only way to make clear EPA's intent to provide industry-wide relief.

On March 19, 2020, the Department of Homeland Security Cybersecurity and Infrastructure Security Agency (DHS-CISA) released its guidance identifying essential critical infrastructure workers. These workers identified by DHS-CISA conduct a range of operations and services that are essential to continued critical infrastructure viability. Food and agriculture workers are included in this list. The guidance document advises states and localities to encourage, rather than hinder, the ability of these industries to effectively continue their work. Other federal and state administrative agencies have provided temporary regulatory leniency to reduce constraints on these critical industries. For example, the Department of Transportation has suspended hours of service limitations for livestock haulers, and states across the nation have suspended unannounced inspections for food processors and manufacturers. EPA can further the administration's effort to reduce regulatory burdens by suspending inspection requirements during the pendency of the COVID-19 pandemic.

The undersigned groups urge EPA to make a "no action" assurance. Thank you for your consideration of America's agricultural producers.

Sincerely,

National Cattlemen's Beef Association

National Pork Producers Council

U.S. Poultry & Egg Association

National Milk Producers Federation

United Egg Producers

National Council of Farmer Cooperatives

American Farm Bureau Federation

Cc: Susan Bodine, Assistant Administrator, Office of Enforcement and Compliance Assurance

Enclosure: EPA 'No Action' Assurance Memo





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

EC-P-1998-125

GM #34  
SE. 1-5

NOV 16 1984

OFFICE OF  
ENFORCEMENT AND  
COMPLIANCE MONITORING

MEMORANDUM

SUBJECT: Policy Against "No Action" Assurances

FROM: Courtney M. Price *Courtney M. Price*  
Assistant Administrator for Enforcement  
and Compliance Monitoring

TO: Assistant Administrators  
Regional Administrators  
General Counsel  
Inspector General

This memorandum reaffirms EPA policy against giving definitive assurances (written or oral) outside the context of a formal enforcement proceeding that EPA will not proceed with an enforcement response for a specific individual violation of an environmental protection statute, regulation, or other legal requirement.

"No action" promises may erode the credibility of EPA's enforcement program by creating real or perceived inequities in the Agency's treatment of the regulated community. This credibility is vital as a continuing incentive for regulated parties to comply with environmental protection requirements.

In addition, any commitment not to enforce a legal requirement against a particular regulated party may severely hamper later enforcement efforts against that party, who may claim good-faith reliance on that assurance, or against other parties who claim to be similarly situated.

This policy against definitive no action promises to parties outside the Agency applies in all contexts, including assurances requested:

- both prior to and after a violation has been committed;
- on the basis that a State or local government is responding to the violation;

- ° on the basis that revisions to the underlying legal requirement are being considered;
- ° on the basis that the Agency has determined that the party is not liable or has a valid defense;
- ° on the basis that the violation already has been corrected (or that a party has promised that it will correct the violation); or
- ° on the basis that the violation is not of sufficient priority to merit Agency action.

The Agency particularly must avoid no action promises relating either to violations of judicial orders, for which a court has independent enforcement authority, or to potential criminal violations, for which prosecutorial discretion rests with the United States Attorney General.

As a general rule, exceptions to this policy are warranted only

- ° where expressly provided by applicable statute or regulation (e.g., certain upset or bypass situations)
- ° in extremely unusual cases in which a no action assurance is clearly necessary to serve the public interest (e.g., to allow action to avoid extreme risks to public health or safety, or to obtain important information for research purposes) and which no other mechanism can address adequately.

Of course, any exceptions which EPA grants must be in an area in which EPA has discretion not to act under applicable law.

This policy in no way is intended to constrain the way in which EPA discusses and coordinates enforcement plans with state or local enforcement authorities consistent with normal working relationships. To the extent that a statement of EPA's enforcement intent is necessary to help support or conclude an effective state enforcement effort, EPA can employ language such as the following:

"EPA encourages State action to resolve violations of the \_\_\_\_\_ Act and supports the actions which \_\_\_\_\_ (State) is taking to address the violations at issue. To the extent that the State action does not satisfactorily resolve the violations, EPA may pursue its own enforcement action."

I am requesting that any definitive written or oral no action commitment receive the advance concurrence of my office. This was a difficult decision to reach in light of the valid concerns raised in comments on this policy statement; nevertheless, we concluded that Headquarters concurrence is important because the precedential implications of providing no action commitments can extend beyond a single Region. We will attempt to consult with the relevant program office and respond to any formal request for concurrence within 10 working days from the date we receive the request. Naturally, emergency situations can be handled orally on an expedited basis.

All instances in which an EPA official gives a no action promise must be documented in the appropriate case file. The documentation must include an explanation of the reasons justifying the no action assurance.

Finally, this policy against no action assurances does not preclude EPA from fully discussing internally the prosecutorial merit of individual cases or from exercising the discretion it has under applicable law to decide when and how to respond or not respond to a given violation, based on the Agency's normal enforcement priorities.

cc: Associate Enforcement Counsels  
OECM Office Directors  
Program Compliance Office Directors  
Regional Enforcement Contacts

**To:** Leopold, Matt (OGC)[Leopold.Matt@epa.gov]; Bodine, Susan[bodine.susan@epa.gov]  
**From:** Brent Fewell[brent.fewell@earthandwatergroup.com]  
**Sent:** Fri 3/20/2020 3:22:31 PM (UTC)  
**Subject:** COVID-19 and compliance issues  
ATT00001.txt

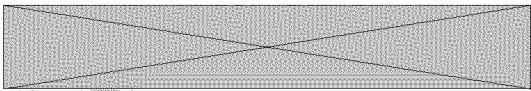
Matt/Susan,

Appreciate you both are likely scrambling with all the issues swirling around the issue. I’m starting to get questions from some of my clients regarding compliance obligations, such as routine inspections under CWA, CAA, RCRA, etc., involving non-emergency personnel. Is the agency considering issuing guidance on these types of matters, e.g., waivers or enforcement discretion.

Hope you both are well and coping okay with this new norm.

Brent

Brent Fewell, Esq., Founder and Chair  
1455 Pennsylvania Ave., NW, Suite 400, Washington, DC 20004  
(202) 280-6362 (o) | (202) 664-9297 (c) | [www.earthandwatergroup.com](http://www.earthandwatergroup.com)



This e-mail communication (including any attachments) may contain legally privileged and confidential information intended solely for the use of the intended recipient. If you are not the intended recipient, you should immediately stop reading this message and delete it from your system. Any unauthorized reading, distribution, copying or other use of this communication (or its attachments) is strictly prohibited.

**To:** Bodine, Susan[bodine.susan@epa.gov]  
**Cc:** Garvey, Megan[garvey.megan@epa.gov]; Sethuraman, Jag[Sethuraman.Jag@epa.gov]  
**From:** Sopkin, Gregory[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=1EFB4E9A259F4A879CB730C5BDC685AC-SOPKIN, GRE]  
**Sent:** Fri 3/20/2020 9:05:25 PM (UTC)  
**Subject:** FW: NDPC letter requesting extension/suspension in response to COVID-19  
[EPA Letter 3.20.20.pdf](#)

Susan:

This is the letter from the North Dakota Petroleum Council that Jag mention during the call today. It seeks enforcement discretion, waivers, or revised compliance timeframes in response to the COVID 19 Pandemic. Please let us know your thoughts – we are happy to discuss. Thank you!

Greg

---

**From:** Kari Cutting <[kcutting@ndoil.org](mailto:kcutting@ndoil.org)>  
**Sent:** Friday, March 20, 2020 12:48 PM  
**To:** Sethuraman, Jag <[Sethuraman.Jag@epa.gov](mailto:Sethuraman.Jag@epa.gov)>  
**Subject:** NDPC letter requesting extension/suspension in response to COVID-19

Jag,

Attached is a letter from the NDPC to Administrator Sopkin asking for EPA action during the COVID-19 crisis. Unusual times require unusual action, first and foremost to protect each other.  
Please call me if you have any questions at 701-390-4048.

Sincerely,  
Kari Cutting

*Kari Cutting  
Vice President  
North Dakota Petroleum Council  
701-557-7741 (direct)  
701-223-6380 (office)  
701-390-4048 (mobile)*

**To:** Bodine, Susan[bodine.susan@epa.gov]; Starfield, Lawrence[Starfield.Lawrence@epa.gov]; Irving, John[Irving.John@epa.gov]  
**Cc:** Mirza, Sabah[Mirza.Sabah@epa.gov]; Tran, Victoria[tran.victoria@epa.gov]; Hull, George[Hull.George@epa.gov]; Norris, Munsel[Norris.Munsel@epa.gov]; Fogarty, Johnpc[Fogarty.Johnpc@epa.gov]; Holmes, Carol[Holmes.Carol@epa.gov]; Koslow, Karin[Koslow.Karin@epa.gov]; Kelley, Rosemarie[Kelley.Rosemarie@epa.gov]  
**From:** Shiffman, Cari[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=645F74D11EEC4EBA9337CB5734AD6098-SHIFFMAN, CARI]  
**Sent:** Thur 3/26/2020 6:00:23 PM (UTC)  
**Subject:** RE: DO NOT USE RE: COVID-19 Implications for EPA's Enforcement and Compliance Assurance Program  
Memorandum on COVID-19 Implications for EPAs Enforcement and Compliance Assurance Program (March 26, 2020).pdf

Please use this version of the signed memo.

Thanks,

Cari Shiffman, Chief of Staff  
U.S. Environmental Protection Agency  
Office of Enforcement and Compliance Assurance  
Office: (202) 564-2898 | Mobile: Ex. 6 Personal Privacy (PP)

---

**From:** Shiffman, Cari <Shiffman.Cari@epa.gov>  
**Sent:** Thursday, March 26, 2020 1:42 PM  
**To:** Bodine, Susan <bodine.susan@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Irving, John <Irving.John@epa.gov>  
**Cc:** Mirza, Sabah <Mirza.Sabah@epa.gov>; Tran, Victoria <tran.victoria@epa.gov>; Hull, George <Hull.George@epa.gov>; Norris, Munsel <Norris.Munsel@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Holmes, Carol <Holmes.Carol@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>  
**Subject:** DO NOT USE RE: COVID-19 Implications for EPA's Enforcement and Compliance Assurance Program

I need to lock down the document more to make it more secure.

Thanks,

Cari Shiffman, Chief of Staff  
U.S. Environmental Protection Agency  
Office of Enforcement and Compliance Assurance  
Office: (202) 564-2898 | Mobile: Ex. 6 Personal Privacy (PP)

---

**From:** Shiffman, Cari <Shiffman.Cari@epa.gov>  
**Sent:** Thursday, March 26, 2020 1:35 PM  
**To:** Bodine, Susan <bodine.susan@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Irving, John <Irving.John@epa.gov>  
**Cc:** Mirza, Sabah <Mirza.Sabah@epa.gov>; Tran, Victoria <tran.victoria@epa.gov>; Hull, George <Hull.George@epa.gov>; Norris, Munsel <Norris.Munsel@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Holmes, Carol <Holmes.Carol@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>  
**Subject:** COVID-19 Implications for EPA's Enforcement and Compliance Assurance Program

Please find the signed memorandum on *COVID-19 Implications for EPA's Enforcement and Compliance Assurance Program*.

Thanks,

Cari Shiffman, Chief of Staff  
U.S. Environmental Protection Agency  
Office of Enforcement and Compliance Assurance  
Office: (202) 564-2898 | Mobile: Ex. 6 Personal Privacy (PP)

**To:** Bodine, Susan[bodine.susan@epa.gov]; Bolen, Brittany[bolen.brittany@epa.gov]  
**Cc:** Charles Franklin[cfranklin@cement.org]; Sean O'Neill[soneill@cement.org]; Shaw, Nena[Shaw.Nena@epa.gov]; Sharpe, Kristinn[Sharpe.Kristinn@epa.gov]; Sachs, Robert[Sachs.Robert@epa.gov]  
**From:** Louis Baer[lbaer@cement.org]  
**Sent:** Fri 3/20/2020 8:47:26 PM (UTC)  
**Subject:** PCA Request for Regulatory/Enforcement Discretion in Light of COVID-19 Crisis  
[PCA OECA Coronavirus Response 03202020 Final Signed.pdf](#)

Ms. Bodine and Ms. Bolen,

Attached please find the formal request from the Portland Cement Association (PCA) for guidance and regulatory/enforcement discretion in light of the COVID-19 crisis. PCA has been working with the Smart Sectors Team to express our members' compliance concerns in these uncertain times and we look forward to your consideration. We appreciate your hard work and look forward to seeing the upcoming enforcement guidance that EPA plans to issue next week. Please let me know if you have any questions. Have a great weekend.

Best,  
Louis Baer

---

**Please Note New PCA Office Address**

Louis A. Baer, Esq., CPEA  
Director/Assistant Counsel, Government Affairs  
Portland Cement Association  
200 Massachusetts Avenue NW, Suite 200  
Washington, DC 20001  
Office: 202-719-1981  
Cell: 314-922-8041  
[lbaer@cement.org](mailto:lbaer@cement.org)  
[www.cement.org](http://www.cement.org)

March 20, 2020

Brittany Bolen  
Assistant Administrator  
Office of Policy, Mail code: 1804A

Susan Bodine  
Assistant Administrator  
Office of Enforcement & Compliance Assurance, Mail code: 2201A

U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue NW  
Washington, DC 20460

**Request for Guidance and Regulatory/Enforcement Discretion in Light of COVID-19 Crisis Response**

Dear Ms. Bolen and Bodine:

On behalf of the Portland Cement Association (PCA) and the larger cement manufacturing industry, let me express my sincere appreciation for the work you and your staff are doing to maintain open lines of communication with the regulated community and provide guidance and flexibility that will allow our members to continue providing critical materials and products while protecting human health and the environment.<sup>1</sup> These principles of transparency and flexibility will be more important than ever as the cement industry and other mining sectors grapple with the emerging COVID-19 crisis.

Increasingly, the COVID-19 crisis and necessary government and site-specific response activities are impairing the ability of facility operators to conduct certain routine and periodic tests, training, and reporting activities. The Portland Cement Association (PCA) and its Members are indicating that staff, contractors, and materials they rely on to conduct testing, calibration, quality assurance activities, and lab activities are unavailable due to travel restrictions, quarantine and lockdown requirements, and supply chain disruptions. Other traditional ways of conducting regulatory reviews, public meetings, and inspections may be impacted as well. This will only increase as staff, contractors, and federal officials are directly affected, either through illness or quarantine, and as federal and state officials impose more extensive restrictions. PCA is presenting these concerns to you as your Office develops enforcement guidance to respond to this crisis.

---

<sup>1</sup> Founded in 1916, PCA is the voice of the U.S. cement manufacturing industry and the widely recognized authority on the technology, economics, and application of cement manufacturing. It represents more than 91% of the U.S. cement manufacturing capacity. PCA members cement manufacturing facilities in 35 states and related cement and concrete operations in all 50 states, servicing every Congressional district.



PCA seeks compliance flexibility and enforcement discretion with respect to the timing, enforcement, and conduct of regulatory compliance activities in the following areas:

- Air
  - Delay or waive stack testing and any QA activities involving continuous emission monitors (CGAs, RATAs) required in 2020 due to inability of contractors to travel and operate within the plant and the unavailability of laboratory staff to conduct analyses
  - Elimination of routine CEM QA procedures where continuous supply of calibration gases cannot be secured (hospitals and medical centers are being given priority for some gases)
  - Use of a certified NIST-traceable thermocouple for APCD inlet temperature monitoring because third-party contractor may not be able to properly calibrate in time for next quarter due to reduced contractor staff (could still use the uncertified t-couple)
  - Delivery by vendors of materials needed for air pollution control equipment (ammonia, dust collector bags, etc.) in conducting required monitoring and control measures due to travel restrictions
- Water
  - Extend or waive NPDES outfall sampling requirements due to external laboratory staff being unavailable to conduct analyses during required sample hold times
  - Extend or waive groundwater sampling ~~deadlines for~~ activities typically done by external consultants at CKD landfills and other areas
- Oil Storage
  - Extend or waive tank integrity testing deadlines due to contractor not able to travel to plant
- Waste
  - Waive or extend requirement to ship offsite within 12 months should plant limit contractors in/out of plant or contractor unable to pick it up due to travel restrictions

## Training

- Waive or extend CAA, CWA and RCRA training requirements for retraining staff due to social distancing and limitation of people in single place (in-person meetings being banned by companies in compliance with federal and state guidelines) and impracticability or unavailability of virtual training resources.
- Waive or extend Method 9 Visible Emissions (VE) Evaluator Certifications: these are six-month recertifications and many VE readers may be up for recertification during this period. Due to social distancing, it will be difficult to conduct the recertification but trained operators on site can still conduct the VE testing.

- Waive or extend training requirements for conducting hazardous waste storage for regulated generators if trained staff are unavailable. Documented inspections could still be conducted, just potential that there are not trained staff available.

#### Reporting

- Waive or extend deadlines for certain reporting requirements. It will be difficult to comply with many reporting requirements during this period of social distancing and travel restrictions. Staff working from home may not be able to access emissions or other environmental data and staff may not be able to travel to the plants to collect and review all hard copy records. Such reporting that plants may not be able to complete and would need flexibility include the following:
  - Semi-annual NESHAP report and Title V operating permit report
  - Criteria and Hazardous Air Pollutant Emissions
  - GHG
  - TRI

PCA appreciates the opportunity to express our members' compliance concerns in these uncertain times and we stand ready to work with you on these and other implementation issues that arise in the coming weeks. If you have any questions regarding these comments, please feel free to contact Louis Baer at 202-719-1981 or [lbaer@cement.org](mailto:lbaer@cement.org).

Sincerely,



Charles L. Franklin  
Vice President & Counsel  
Government Affairs

CC: EPA Smart Sector Team

Chris Jahn  
President & CEO



March 20, 2020

The Honorable Andrew Wheeler  
Administrator  
United States Environmental Protection Agency

Dear Mr. Administrator:

On behalf of the member companies of the American Chemistry Council, I request that the appropriate Environmental Protection Agency (EPA) enforcement authorities at the national and regional level be provided guidance on enforcement discretion in addressing potential violations of any time-determined regulatory requirements due to the ongoing coronavirus crisis. In some cases, compliance requirements might be altered to recognize the inherent difficulties in meeting the requirements with a work force that is largely teleworking.

Several examples highlight the need for such enforcement discretion.

Many companies have already instituted strict telework policies for their corporate staffs to promote social distancing. Operations staff have also been instructed to limit contact with persons outside plants, to limit the opportunities for spread of the coronavirus, consistent with the guidance provided by public health officials. These limitations may impact companies that face requirements for agency or agency contractor inspections, witness personnel, or instrument calibration. The performance of these activities requires access to the site where member companies are attempting to limit potential exposure following guidance from Centers for Disease Control, states, or local health departments.

Regulatory requirements like the Risk Management Plan (RMP) under the Clean Air Act (CAA) mandate process hazard assessments (PHA) every 5 years. With the coronavirus restrictions, corporate personnel may not be able to travel to facilities to conduct the PHA on time, as required by the regulation.

Many companies employ third parties to conduct routine compliance testing such as stack testing under the CAA or discharge monitoring and laboratory analysis under existing NPDES programs. These operations and required staff may be hampered or delayed by travel or other restrictions implemented to comply with health departments advice or government declarations. These restrictions may also extend the time required to conduct this testing.

Similarly, export notifications under section 12(b) of the Toxic Substances Control Act must be made within 7 days of forming the intent to export the chemical. Yet corporate policies—again consistent with the guidance provided by public health officials—may limit the ability of corporate employees to travel to obtain necessary signatures certifying compliance, or complete the notices within the timeframe allowed by regulation. These examples are but two across the wide-range of EPA regulatory requirements, compliance with which may be affected.



We strongly recommend that you direct EPA enforcement authorities to exercise their enforcement discretion with respect to regulatory compliance that may be affected by efforts to limit the spread of the coronavirus. In the alternative, we believe the Agency should consider temporary, alternative means of compliance (e.g., such as email deliveries of applicable notices, to be followed by regular notification requirements as soon as practicable thereafter).

In addition, ACC believes that a broad extension (90 to 180 days) of compliance deadlines that do not impact public health or safety should be considered. It would be particularly helpful if EPA would provide guidance to the States to consider similar extensions, particularly in programs (like remediation) that are subject to both federal and State jurisdiction.

We very much appreciate EPA's leadership in responding to the coronavirus. Enforcement discretion, and temporary alternative compliance means, are an appropriate, common sense response to ensure that the regulated community continues to meet its regulatory obligations in the most practical way possible.

Please let me know if ACC or our members can be of any assistance.

Sincerely,



Christopher Jahn  
President and Chief Executive Officer

cc: S. Bodine (OECA)  
A. Dunn (OCSP)  
M. Leopold (OGC)  
P. Wright (OLEM)  
D. Ross (OW)  
A. Idsal (OAR)

**To:** Bodine, Susan[bodine.susan@epa.gov]; Cook, Steven[cook.steven@epa.gov]; Wright, Peter[wright.peter@epa.gov]  
**From:** Gary.Gengel@lw.com[Gary.Gengel@lw.com]  
**Sent:** Fri 3/20/2020 8:39:29 PM (UTC)  
**Subject:** RE: force majeure policy

Sorry, I should have and am now including Peter with my question below.

Clients are scrambling to try to do the right thing under the circumstances.

Thanks!

**Gary P. Gengel**

**LATHAM & WATKINS** LLP  
885 Third Avenue  
New York, NY 10022-4834  
Direct Dial: +1.212.906.4690  
Mobile: +1.609.306.9835  
Email: [gary.gengel@lw.com](mailto:gary.gengel@lw.com)

---

**From:** Gengel, Gary (NY)  
**Sent:** Friday, March 20, 2020 11:53 AM  
**To:** bodine.susan@epa.gov; Steven Cook <cook.steven@epa.gov>  
**Subject:** force majeure policy

Susan and Steven –

I hope you are safe and well in these crazy times . . .

Any chance EPA will be issuing a policy statement on COVID-19 and force majeure in connection with permits, AOCs and consent decrees?

Thanks, and stay safe!

**Gary P. Gengel**

**LATHAM & WATKINS** LLP  
885 Third Avenue  
New York, NY 10022-4834  
Direct Dial: +1.212.906.4690  
Mobile: +1.609.306.9835  
Email: [gary.gengel@lw.com](mailto:gary.gengel@lw.com)

---

This email may contain material that is confidential, privileged and/or attorney work product for the sole use of the intended recipient. Any review, disclosure, reliance or distribution by others or forwarding without express permission is strictly prohibited. If you are not the intended recipient, please contact the sender and delete all copies including any attachments.

Latham & Watkins LLP or any of its affiliates may monitor electronic communications sent or received by our networks in order to protect our business and verify compliance with our policies and relevant legal requirements. Any personal information contained or referred to within this electronic communication will be processed in accordance with the firm's privacy notices and Global Privacy Standards available at [www.lw.com](http://www.lw.com).

**To:** Deziel, Dennis[Deziel.Dennis@epa.gov]; Lopez, Peter[lopez.peter@epa.gov]; Servidio, Cosmo[Servidio.Cosmo@epa.gov]; Walker, Mary[walker.mary@epa.gov]; Thiede, Kurt[thiede.kurt@epa.gov]; Gulliford, Jim[gulliford.jim@epa.gov]; McQueen, Ken[McQueen.Ken@epa.gov]; Sopkin, Gregory[sopkin.gregory@epa.gov]; Busterud, John[Busterud.John@epa.gov]; Hladick, Christopher[hladick.christopher@epa.gov]; Garvey, Megan[garvey.megan@epa.gov]; Vizian, Donna[Vizian.Donna@epa.gov]; Bodine, Susan[bodine.susan@epa.gov]; Leopold, Matt (OGC)[Leopold.Matt@epa.gov]; Orme-Zavaleta, Jennifer[Orme-Zavaleta.Jennifer@epa.gov]; Dunlap, David[dunlap.david@epa.gov]; Gunasekara, Mandy[gunasekara.Mandy@epa.gov]  
**From:** Benevento, Douglas[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=93DBA0F4F0FC41C091499009A2676F89-BENEVENTO,]  
**Sent:** Sat 3/21/2020 1:28:20 PM (UTC)  
**Subject:** Fwd: EPMC - AG Memo on State & Local Movement Restrictions  
[AG MEMO TO USAs.pdf](#)  
[ATT00001.htm](#)

FYI

Sent from my iPhone

Begin forwarded message:

**From:** "Daphnis, Kristy L. EOP/OMB" <[REDACTED] Ex. 6 Personal Privacy (PP)>  
**Date:** March 20, 2020 at 6:54:14 PM EDT  
**To:** "Daphnis, Kristy L. EOP/OMB" <[REDACTED] Ex. 6 Personal Privacy (PP)>  
**Cc:** DL OMB Dir Office OMB\_COVID19OPS; [REDACTED] Ex. 6 Personal Privacy (PP)  
**Subject:** EPMC - AG Memo on State & Local Movement Restrictions

EPMC Members –

The Attorney General has signed a directive to the United States Attorneys across the country to work with the local authorities to ensure that critical federal personnel and contractors can continue to travel during State and local emergency restrictions travel restrictions (attached). The US attorneys in every state will now take their action with the state authorities and police there. Please share this Memo with your Agency leadership, particularly those with offices in state & local jurisdictions most impacted.

If you have any questions about the scope or enforcement of this Memo, please reach out to Lee Loftus.



Office of the Attorney General  
Washington, D. C. 20530

March 20, 2020

MEMORANDUM FOR ALL UNITED STATES ATTORNEYS

FROM: THE ATTORNEY GENERAL

A handwritten signature in black ink, appearing to read "W.P. Barr", is written over the text "THE ATTORNEY GENERAL".

I want to thank you for all of your hard work during these difficult times. The Department's task of protecting the rights and safety of Americans is even more critical as our country combats the COVID-19 and its pernicious impact on our citizens' lives.

As a result of the COVID-19 pandemic, a number of cities and states have imposed shelter in place and lock down orders or other travel restrictions. We can expect additional orders as the crisis develops. As you know, many federal employees, including Department of Justice employees carrying out law enforcement functions, are at times required to travel for official purposes. In order to ensure that federal employees continue to provide official services to the public, I am directing that all United States Attorneys contact state and local law enforcement leaders in their geographic areas of responsibility to inform them of the following:

- 1) Federal agencies have issued directives addressing the circumstances under which federal employees may travel and commute consistent with CDC guidelines. Federal agencies will continue to monitor and ensure that these directives are followed and modified as appropriate as the situation develops.
- 2) If encountered by local law enforcement during such travel, federal employees shall identify themselves, using their Personal Identity Verification or "PIV" cards, and explain the nature of their work and travel. These cards include a photograph of the employee and list the federal agency for whom the employee works.
- 3) Accordingly, the United States Attorneys should inform their state and local law enforcement partners that we need to ensure that local law enforcement officials enforcing travel restrictions are aware of the fact that federal employees must be allowed to travel and commute to perform law enforcement and other functions and should not be prevented from doing so, even when travel restrictions are in place.

Please also inform the Chief Judge and federal law enforcement partners in your district that Department employees remain able to mobilize as appropriate in order to continue our collective mission.

**To:** Bodine, Susan[bodine.susan@epa.gov]; Bolen, Brittany[bolen.brittany@epa.gov]; Gunasekara, Mandy[gunasekara.Mandy@epa.gov]  
**Cc:** Bill Koetzle[KoetzleB@api.org]; Howard Feldman[Feldman@api.org]  
**From:** Frank Macchiarola[MacchiarolaF@api.org]  
**Sent:** Mon 3/23/2020 8:48:51 PM (UTC)  
**Subject:** API Letter to Administrator Wheeler 3/23/20  
[Letter to Admin Wheeler 3.23.20-final copy.pdf](#)  
[3.20.2020 API Letter to President Trump.pdf](#)

Please find attached a letter from API to Administrator Wheeler dated 3/23/20 regarding non-essential compliance discretion and critical infrastructure designations. Also, please find attached a referenced letter from API's Mike Sommers to President Donald J. Trump of 3/20/20. Please let me know if you have any questions. Thank you for your attention to this matter.

Best,  
Frank





**Michael J. Sommers**  
President & Chief Executive Officer  
API  
200 Massachusetts Avenue, NW  
Suite 1100  
Washington, DC 20001-5571  
202-682-8500  
sommersm@api.org

March 20, 2020

The Honorable Donald J. Trump  
President of the United States  
The White House  
Washington, DC 20500

Dear President Trump:

On behalf of the members of the American Petroleum Institute,<sup>1</sup> I would like to thank you for your leadership in our nation's response to the global crisis arising from COVID-19. The oil and natural gas industry, like other critical infrastructure sectors, is working tirelessly to ensure there is no interruption in our supply chains as a result of this pandemic. We play a critical role in providing affordable and reliable energy to American families and businesses, which is essential to maintain our national security and will drive our economic recovery. We have identified two potential overarching issues we would like to bring to your attention: critical infrastructure designations and temporary relief through non-essential compliance discretion necessitated by the need to follow appropriate guidelines to mitigate this pandemic.

### **Critical Infrastructure Designations**

As a result of the restrictions and guidelines issued by the President of the United States' Coronavirus Task Force, the Centers for Disease Control and Prevention, and potential decisions at the state and local levels, I am writing to request that the Administration and states recognize that API's members provide the necessary fuels that ensure products and services are delivered in a timely fashion around the country. Our supply chain is robust and complex. Ensuring that our entire supply chain is protected from these impacts to the fullest extent possible is of great importance and will enable our industry to continue to provide the fuels that power our communities.

---

<sup>1</sup> API represents all segments of America's oil and natural gas industry. Its more than 600 members produce, process, and distribute most of the nation's energy. The industry supports 10.9 million U.S. jobs and is backed by a growing grassroots movement of millions of Americans. API was formed in 1919 as a standards-setting organization. In its first 100 years, API has developed more than 700 standards to enhance operational and environmental safety, efficiency and sustainability.

An equal opportunity employer



To achieve this goal, I request that your Administration ensure that state and local governments receive timely guidance on critical infrastructure personnel, including our employees. Such guidance should enable employees who provide critical support to our nation's infrastructure to reach their work locations and continue to provide their essential services. We worked with the Department of Homeland Security, through the Oil and Natural Gas Sector Coordinating Council, to ensure appropriate personnel were included in such guidance. We request your Administration's support in ensuring that this guidance reaches the appropriate state and local officials across the nation so that critical personnel designations are similar across different jurisdictions.

### **Non-essential Compliance Discretion**

We are grateful for the ongoing work of your Administration in providing appropriate guidelines for mitigation of the pandemic. In light of these guidelines, the oil and natural gas industry needs to maintain safe and reliable operations, taking into consideration that there may be limited personnel capacity to manage the full scope of the current regulatory requirements. As such, we will be requesting assistance in temporarily waving non-essential compliance obligations from the relevant agencies and departments within your Administration and/or their state counterparts, and may include recordkeeping, training or other non-safety critical requirements. In the coming days and as events warrant, we will be providing these government entities with greater specificity regarding this request.

These types of requests could include, but are not limited to, issues such as:

- Department of Transportation
  - Hours of service limitations
  - Nonessential inspections
- Department of the Interior
  - Reporting and auditing requirements
  - Leasing and permitting considerations
  - Nonessential training
- Department of Homeland Security/Department of State
  - Foreign sourced goods
  - Resolution of visa issues

An equal opportunity employer



- Environmental Protection Agency
  - Waivers of seasonal fuel requirements (and relevant associated state waivers)
  - Routine testing and reporting requirements

In closing, the COVID-19 pandemic represents a significant and historic threat to our nation. We thank the Administration for its continued efforts in combating this threat, and we look forward to partnering with you to help ensure that critical fuels are available, so that we as a nation can continue to respond to this crisis. Thank you for consideration of the requests outlined in this letter, and please do not hesitate to have your Administration contact API as we stand ready to assist in any way possible.

Sincerely,

A handwritten signature in dark ink, appearing to read "Michael J. Sommers", is written over the printed name.

Michael J. Sommers

cc: U.S. Governors

An equal opportunity employer



Frank J. Macchiarola  
Senior Vice President  
Policy, Economics & Regulatory Affairs  
API  
200 Massachusetts, NW  
Washington, DC 20001  
Telephone 202-682-8167  
Fax 202-682-8426  
Email [macchiarolaf@api.org](mailto:macchiarolaf@api.org)  
[www.api.org](http://www.api.org)

March 23, 2020

The Honorable Andrew Wheeler, Administrator  
US Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

Dear Administrator Wheeler:

On behalf of the members of the American Petroleum Institute,<sup>1</sup> I would like to thank you for your efforts at the Environmental Protection Agency to assist in our nation's response to the global crisis arising from the COVID-19 pandemic. The oil and natural gas industry, like other critical infrastructure sectors, is working tirelessly to help ensure there is no interruption in our supply chains as a result of these unprecedented circumstances. We play a critical role in providing affordable and reliable energy, which is essential to maintaining our national security and will help drive our economic recovery. As indicated in a letter dated March 20<sup>th</sup> from API President and CEO Michael J. Sommers to President Donald J. Trump (attached), there are two potential overarching issues that may affect our industry: critical infrastructure designations and temporary relief through non-essential compliance discretion. The purpose of this letter is to specifically address the issues within your agency's purview associated with non-essential compliance discretion.

### **Non-essential Compliance Discretion**

The oil and natural gas industry remains committed to prioritizing safe and reliable operations, but is taking into consideration that there may be limited personnel capacity

---

<sup>1</sup> API represents all segments of America's oil and natural gas industry. Its more than 600 members produce, process, and distribute most of the nation's energy. The industry supports 10.9 million U.S. jobs and is backed by a growing grassroots movement of millions of Americans. API was formed in 1919 as a standards-setting organization. In its first 100 years, API has developed more than 700 standards to enhance operational and environmental safety, efficiency and sustainability.

to manage the full scope of the current regulatory requirements. As such, we are requesting assistance from your agency in temporarily waiving non-essential compliance obligations, and we request coordination with your state agency counterparts as necessary. As indicated in the letter to President Trump, these issues may include recordkeeping, training or other non-safety critical requirements.

Industry is seeking temporary relief through enforcement discretion, waivers or revised compliance timeframes in response to the COVID-19 pandemic. Specifically, industry is asking Federal and State agencies to publicly provide guidance related to performance delays tied to challenges with the pandemic associated with:

- Quarantine/treatment due to employee exposure to COVID-19;
- Measures taken by the industry to avoid COVID-19 transmission and spread;
- Good faith attempts by the industry to comply with national, state or local edicts related to controlling the virus;
- Addressing the risks of continuing to conduct routine agency inspections; and
- Contractor availability and supply chain disruptions related to all of the above.

Individual company requests for relief would be burdensome to file and track and a more holistic approach may be necessary in an unprecedented situation such as the one we are facing. Nonetheless, industry will make efforts to comply with requirements, but obviously the situation may limit some activities.

Additionally, many of the nation's petroleum refineries are parties to one or more state or federal judicial or administrative consent agreements or decrees with the U.S. EPA and/or its state counterparts. These agreements generally include force majeure clauses which require the settling party to notify the government of known or anticipated compliance delays within tight timeframes. Failure to meet the prescribed notification timeframe often voids any enforcement protection the settling party might otherwise have under the agreement. These hurdles become particularly problematic in the current climate of the COVID-19 disease, where delays in meeting settlement



requirements might occur due to workforce impacts or reductions or other disruptions that are difficult to predict and continue to evolve. They may also be complicated by the daily pronouncement of protection measures suggested or required by national, state and local governments. There may be a need for federal and state officials to work with individual companies as part of their settlement agreements.

Given the considerations associated with the importance of following CDC guidance for public health, the attached list provides detailed examples of issues for which industry is seeking temporary relief through enforcement discretion, waivers or revised compliance timeframes in response to the COVID-19 pandemic.

In closing, the COVID-19 pandemic represents a significant and historic threat to our nation. We thank the Administration for its continued efforts in combating this threat and we thank your agency for its efforts key to this undertaking. We look forward to partnering with you to help ensure that critical fuels are available, so that we as a nation can continue to respond to this crisis. Thank you for consideration of the requests outlined in this letter, and please do not hesitate to contact API as we stand ready to assist in any way possible.

Sincerely,

A handwritten signature in black ink, appearing to read "Frank J. Macchiarola".

Frank J. Macchiarola

## **Attachment: API Member Company Priority Issues for COVID-19 Response**

Industry is seeking temporary relief through enforcement discretion, waivers or revised compliance timeframes in response to the COVID-19 pandemic. Specifically, industry is asking EPA to publicly provide guidance related to performance delays tied to challenges with the pandemic associated with the identified constraints. Given the uncertainty of the severity and duration of this pandemic, the following categories of constraints have been identified:

- Category 1: Administrative constraints while working remotely
- Category 2: Physical constraints with on-site testing/monitoring requirements
- Category 3: Operability of assets

For certain constraints, we have also identified some specific potential solutions in sub-bullets.

### **Category 1: Administrative challenges while working remotely**

EPA and State Agency examples include but are not limited to:

- Wet signatures requirements on permit applications and reports, such as Title V permit applications. Responsible officials may not have ready access to printers or a DocuSign option. Clarity needed on alternatives.
- Temporary relief for notary witnessing of signatures on permits, etc.
- Potential delay to project permits due to closed state agency offices/canceled meetings that may reset the public comment period.
- Deferred permit renewal applications for expiring permits to address revised work schedules/arrangements.
- Potential to miss certifying laboratory equipment unless NIST certified instruments can be purchased and delivered in time.
- Periodic certification and reporting:
  - Deferred filing of periodic reports

- Examples include emissions inventory, emissions banking and trading, TRI reports and rule- or permit-required periodic reports.
- Filing of reports without the normal signatures (where plant manager or formal designee is unavailable).

## **Category 2: Physical challenges with on-site testing/monitoring/reporting requirements**

EPA and State Agency examples include but are not limited to:

- Waivers of seasonal fuels requirements
- Fuels reporting and compliance
  - Request waivers or enforcement discretion for late reports due to access and resource limitations for the following types of reports:
    - Annual gasoline and Renewable Fuel Standard (RFS) reports
    - EMTS Fuels ABT Credit generation and retirement for compliance with gasoline programs
    - EMTS RIN retirements for annual compliance with RFS standards
- Annual gasoline and RFS program attest engagements
- Fugitive Leak Detection and Repair (LDAR)
  - Deferred LDAR monitoring
  - Late repair times
  - Late recheck of LDAR component after monitoring
  - Delayed reporting
  - Inability to address delay of repair during unit shutdowns due to personnel, supply or external resource shortages or disruptions
- Delayed GHG reporting
- Benzene Waste Operations (BWON)
  - Deferred monitoring
  - Late repair times
  - Delayed reporting



- Potential for delayed or missed sampling required for reporting or to demonstrate exemption from control
- NSPS & MACT
  - Regulatory noncompliance due to limited onsite personnel or external resource shortages or disruptions
  - Late reports due to limited onsite personnel or external resource shortages or disruptions
  - Subpart XX tank trucks vapor tightness tests may not be available
  - Lower shipping levels could prevent enough product available to float an internal floating roof tank when refilling, resulting in a compliance issue under GD GACT or NSPS Subpart Kb
- CEMS and stack tests
  - Delayed stack and RATA testing
  - Missed or late CEMS evaluation
  - Unable to repair CEMS due to specialized knowledge vested in personnel
  - Unable to repair CEMS due to parts unavailability
  - Delayed reports from contractors whose employees are quarantined or in remote work arrangements
  - Waive or delay 6-month smoke school recertification due to cancellation of training/testing sessions to avoid unavailability of emissions observers.
- Cooling tower sampling
  - Delayed sampling and analysis
  - Delayed reports from contractors whose employees are quarantined or in remote work arrangements
  - Lack of lab availability
- Fence line monitoring
  - Unable to change sample tubes in a timely manner
  - Disruptions in lab shipments
  - Lab analytical delays

- Delayed reports from contractors whose employees are quarantined or in remote work arrangements
- Different verifiers for Title V obligations may be unavailable to certify compliance with the requirements
- Extend recurring/refresh deadline for Method 9 (visible emissions) certification.
- Extend deadlines for required visible emission monitoring of permitted facilities.
- Drinking Water Permit testing and reporting requirements
  - Provide flexibility on routine monitoring/sampling/analysis required drinking water permits.
  - Expected delays in laboratory analysis and short hold time for coliform
- Effluent inspections, sampling and reporting (NPDES and SWPPP)
  - Deferred inspections (monthly, quarterly, etc.).
  - Deferred sampling and WET testing.
  - Deferred filing of periodic reports.
  - Late lab turn-around time on sample results.
  - Missed hold-time on samples.
  - Delayed reporting.
  - Delayed annual training.
  - Contractor who typically performs grab samples is temporarily unable to access site pending medical screening.
  - Improper storage temperature.
  - Inability to collect discharge samples within specified time period due to unavailability of personnel.
  - Storm water monitoring and compliance samples within required timeframe (for rain events) may be problematic.
  - Hydrotesting – providing for pre-approval of low-risk discharges and/or a streamlined approval process. This would help prevent holding up construction and field work to get these permits as the current approval processes are likely to slow down with agencies working remotely.

- Lack of lab availability.
- NPDES/Discharge Permits (EPA/State)
  - Effluent inspections, sampling and reporting.
  - Deferred inspections (monthly, quarterly, etc.).
  - Deferred sampling and WET testing.
  - Deferred filing of periodic reports.
  - Late lab turn-around time on sample results.
  - Missed hold-time on samples.
  - Delayed reporting.
  - Contractor who typically performs daily grab samples is temporarily unable to access site pending medical screening.
  - Improper storage temperature.
- Storm Water Permit Compliance (SWPPP/SWP/Discharge Plans) (EPA/State)
  - Possible disruption of required inspections.
  - Challenges with post storm event inspections due to contractor availability.
  - Sample collection and delayed laboratory analyses.
  - Possible delay of BMP inspections and non-compliance repairs to BMPs due to limited contractor availability.
  - Delayed monitoring/annual reporting requirements
- Soil and/or groundwater remediation
  - Delayed sampling and reporting requirements.
  - Delayed project implementation.
  - Lack of lab availability.
- Tanks
  - Potential for late repairs on failed tank inspections
  - Tank inspections (deadlines and logistical issues)
  - Delayed above or underground tank inspections
- Hazardous waste management
  - Ensure that waste and hazardous waste fall under the definition of essential travel/trade.

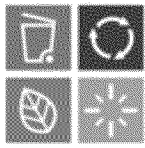
- Deferral of movements past time limits, including 3-day satellite accumulation time limit and 90-day accumulation time limit.
- Impacts on speculative accumulation requirements.
- Delayed analytics and delayed waste characterization.
- Delayed reporting of specific RCRA permit or remediation program.
- Manifest management disruptions.
- TSD permit noncompliance due to personnel, supply or external resource shortages or disruptions.
- Deferral of weekly inspections.
- Delay of annual training.
- Potential for missed weekly RCRA inspections due to personnel shortage.
- Temporary EPA ID number request processing.
- Renewal of Hazardous Material Transporter ID numbers (annual; via DOT).
- Delayed/limited analytical laboratory support for profiling.
- SPCC
  - SPCC applicability determinations.
  - Generation of site security diagrams.
  - Secondary containment repairs.
  - Deferral of daily and monthly inspections.
  - Deferral of annual training and drills.
  - API Standard 653 integrity inspections.
- Underground Injection Control (UIC)
  - Overall UIC compliance obligations.
  - Deferred Mechanical Integrity Testing (MITs).
  - Deferred monthly/annual monitoring requirements.
  - Surface Injection Pressure monitoring.
  - Injection fluid sampling & laboratory analyses.
  - Monthly disposal volume reporting.
- Self-audits/disclosures (where applicable)
  - Late notices.
  - Late Disclosures of Violation and other submittals on pending audits.

- Late implementation of corrective actions.
- Emergency response drills and mandatory equipment deployment to demonstrate emergency readiness.
- Past-due regulatory training that can only be done in a face-to-face environment, e.g. Method 9 opacity certification.
- Fees for TSCA risk evaluation
  - Manufacturers of 20 high priority chemicals required to conduct risk evaluation by May 27, 2020. Delays needed to gather information from many sources in short timeframe.
- Chemical testing requirements
  - Laboratory capacity may be affected – could impact TSCA testing requests/requirements.
- Chemical Data Reporting (CDR)
  - EPA extending CDR reporting 2 months; EPA should consider additional extensions from potential delays due to needed EPA training, electronic reporting system functioning, etc.

### **Category 3: Operability of Assets**

The industry is already prioritizing their resources for the continued maintenance of its facilities, which is a business-critical activity. This is necessary to not only provide for the safety of its constrained employee and contractor workforce, but also to continue to produce the fuels that the nation depends upon daily. Operators are continuing to obtain permits for activities that are deemed essential to the safe operation of their facilities.

Temporary relief from the agency requirements outlined in Categories 1 and 2 are not expected to result in a significant impact to human health or the environment. By providing temporary relief from those requirements, operators and suppliers will be able to prioritize their resources on those critical activities to enable the continued production of fuels and products.



**National  
Waste & Recycling  
Association<sup>SM</sup>**  
Collect. Recycle. Innovate.

1150 Crystal Drive  
Suite 804  
Arlington, VA 22202  
T 202.244.4700

March 16, 2020

***Via Electronic Transmission: [bodine.susan@epa.gov](mailto:bodine.susan@epa.gov)***

Ms. Susan Bodine  
USEPA Headquarters  
William Jefferson Clinton Building  
1200 Pennsylvania Avenue, NW, Mail Code: 2201A  
Washington, DC 20460

**Re: COVID-19 State of Emergency Declaration – Landfill regulatory flexibility**

On behalf of the solid waste industry, the National Waste & Recycling Association (Nwra) requests that additional flexibility be provided to the industry to address issues related to managing waste and recycling during the state of emergency over COVID-19. Nwra is a not-for-profit trade association representing private solid waste and recycling collection, processing, and management companies that operate in all fifty states.

At this time, all fifty states and Washington D.C. have declared a state of emergency due to the COVID-19 situation in order to limit the spread and threat of the disease and to ensure necessary services are available. On March 19, 2020, the Department of Homeland Security Cybersecurity and Infrastructure Security Agency (CISA) recognized the solid waste industry in their initial list of essential critical infrastructure workers.

As a result of CISA's determination, the Federal Motor Carrier Safety Administration (FMCSA) expanded their emergency declaration to include essential workers providing regulatory relief from hours of service rules and additional enforcement discretion for expired licenses and medical cards.

While the CISA list is welcome guidance, because it is just an advisory, the industry requires additional consideration directly from regulators. With this in mind, Nwra members would like to be prepared for what we anticipate may be upheavals in our ability to comply with permits. These disruptions are anticipated to occur for a variety of reasons, such as:

- Impacts to facility operations as a result of employees or contractors becoming ill from community spread of the virus;
- Employee or contractor availability due to issues such as childcare arising from school closings;
- Restricted movement for employees or contractors should states elect not to follow CISA's guidance or due to confusion arising from swiftly changing rules;
- Compliance with recommendations on social distancing could impact work where multiple employees need to work in close proximity;
- Limited availability of personal protective equipment (PPE) due to panic buying by the public;
- Limited supplies or equipment such as calibration gas due to supply chain interruptions; and,
- Limited availability of support services such as laboratories for sample analysis or reporting.

Any, or all of these could limit the operational efficiencies potentially causing disruptions in our ability to comply with very prescriptive permit criteria.

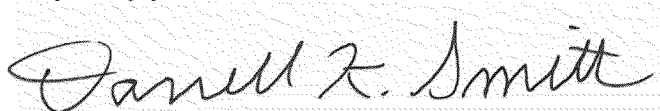
Landfills are subject to regulatory requirements under Subtitle D of the Resource Conservation and Recovery Act (RCRA), multiple sections of the Clean Air Act (CAA), and National Pollutant Discharge Elimination System (NPDES). These regulations subject landfills to a significant number of time-sensitive prescriptive requirements. When delaying these tasks or missing timelines do not hinder remedial measures required to protect the public and the environment, enforcement of these provisions should be suspended. Additionally, when events render it impossible to complete these tasks without violating other laws or placing people at risk, enforcement of regulatory timelines requirements must be suspended. Therefore, NWRA requests that the EPA consider granting enforcement discretion from the following restrictions:

- Compliance timelines – Regulations or permits often stipulate timelines for completing and/or documenting tasks such as sampling. Staff shortages may result in missed timelines.
- Notifications – Communications could be interrupted, especially in remote or rural areas where many landfills are located. Therefore, it should be recognized that notification may be delayed and, when communication is restored, simple notification (such as an email) sent by affected parties to a regulatory agency should be accepted as sufficient to document issues.
- Monitoring – Landfill gas wellfield monitoring, surface emissions monitoring, groundwater monitoring, leachate monitoring, among others could be delayed or otherwise impacted by availability of technicians.
- Infrastructure inspections – Routine inspections (e.g. cover integrity inspections under CAA) could be impacted by staff shortages.
- Sampling and analysis – Laboratories may be delayed in providing sampling bottles and also may be delayed in performing routine analysis resulting in missed analysis or timelines.

- Reporting and training - Routine required reporting and training (e.g., waste volumes, analytical data reports, deviation reports) could be delayed.
- Variance requests - We anticipate that regulators may be slow processing necessary variances. Therefore, it should be recognized that variances or other urgent permitting actions may require landfill operators to use their best judgment to address matters expeditiously that previously would require regulatory approvals.
- Operational changes – Due to availability of supplies or material (e.g. daily cover availability due to borrow pit not deemed essential), landfills may need to use discretion to deviate from normal operational procedures.

NWRA urges the quick consideration of this request so that our members can appropriately manage and stage material. NWRA appreciates your consideration of our comments and would appreciate the opportunity to discuss these comments further to clarify any points. Should you have any questions, please call Anne Germain at 202-364-3724 or e-mail at [agermain@wasterecycling.org](mailto:agermain@wasterecycling.org).

Very truly yours,



Darrell K. Smith  
President and Chief Executive Officer  
National Waste & Recycling Association

c:     A. Wheeler, EPA Administrator  
       P. Wright, Assistant Administrator, OLEM  
       A. Idsal, Principal Deputy Assistant Administrator, OAR  
       A. Gunasekara, Chief of Staff



**To:** Bodine, Susan[bodine.susan@epa.gov]; Starfield, Lawrence[Starfield.Lawrence@epa.gov]; Irving, John[Irving.John@epa.gov]; Bailey-Morton, Ethel[Bailey-Morton.Ethel@epa.gov]; Loving, Shanita[Loving.Shanita@epa.gov]; Shiffman, Cari[Shiffman.Cari@epa.gov]; Mirza, Sabah[Mirza.Sabah@epa.gov]; Makepeace, Caroline[Makepeace.Caroline@epa.gov]; Johnson, Kathleen[Johnson.Kathleen@epa.gov]; BERMAN, TESSA[Berman.Tessa@epa.gov]  
**Cc:** OECA-OCE-MANAGERS[OECAOCEMANAGERS@epa.gov]; Buterbaugh, Kristin[Buterbaugh.Kristin@epa.gov]; Leff, Karin[Leff.Karin@epa.gov]; Mackey, Cyndy[Mackey.Cyndy@epa.gov]; Hindin, David[Hindin.David@epa.gov]  
**From:** Kelley, Rosemarie/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=23B7C900323047FCA012DF62C58C4D22-RKELLEY]  
**Sent:** Thur 3/19/2020 1:01:30 AM (UTC)  
**Subject:** RE: OCE Weekly Agenda for 3/19/20  
[Susan Options re COVID19 message rev 03 18 20 .docx](#)

Susan—

Attached is our options paper for providing flexibility to entities that may have difficulty complying due the COVID-19.

Rosemarie

---

**From:** Buterbaugh, Kristin <Buterbaugh.Kristin@epa.gov>  
**Sent:** Wednesday, March 18, 2020 3:01 PM  
**To:** Bodine, Susan <bodine.susan@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Irving, John <Irving.John@epa.gov>; Bailey-Morton, Ethel <Bailey-Morton.Ethel@epa.gov>; Loving, Shanita <Loving.Shanita@epa.gov>; Shiffman, Cari <Shiffman.Cari@epa.gov>; Mirza, Sabah <Mirza.Sabah@epa.gov>; OECA-OCE-MANAGERS <OECAOCEMANAGERS@epa.gov>; Makepeace, Caroline <Makepeace.Caroline@epa.gov>; Johnson, Kathleen <Johnson.Kathleen@epa.gov>; BERMAN, TESSA <Berman.Tessa@epa.gov>  
**Cc:** Buterbaugh, Kristin <Buterbaugh.Kristin@epa.gov>  
**Subject:** OCE Weekly Agenda for 3/19/20

The agenda and briefing paper for the OCE Weekly on March 19<sup>th</sup> are attached. Thank you.

**Kristin Buterbaugh**  
Special Assistant  
OECA - Office of Civil Enforcement  
U.S. Environmental Protection Agency  
WJC South 3119C  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460  
(202) 564-4479  
[Buterbaugh.Kristin@epa.gov](mailto:Buterbaugh.Kristin@epa.gov)

*This email may contain deliberative, attorney-client, attorney work product, or otherwise privileged material. Do not release under FOIA without appropriate review. If this email has been received by you in error, you are instructed to delete it from your machine and all storage media whether electronic or hard copy.*

**To:** Starfield, Lawrence[Starfield.Lawrence@epa.gov]; Bodine, Susan[bodine.susan@epa.gov]; Irving, John[Irving.John@epa.gov]; Kelley, Rosemarie[Kelley.Rosemarie@epa.gov]; Koslow, Karin[Koslow.Karin@epa.gov]; Johnson, Kathleen[Johnson.Kathleen@epa.gov]; Hindin, David[Hindin.David@epa.gov]; Werner, Jacqueline[Werner.Jacqueline@epa.gov]; Mackey, Cyndy[Mackey.Cyndy@epa.gov]; DeLeon, Rafael[Deleon.Rafael@epa.gov]; Holmes, Carol[Holmes.Carol@epa.gov]  
**Cc:** Shiffman, Cari[Shiffman.Cari@epa.gov]  
**From:** Fogarty, Johnpc[O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8546B387C687410D88EEEE387DADDF56-JFOGAR02]  
**Sent:** Wed 3/18/2020 12:18:13 PM (UTC)  
**Subject:** RE: Point Source Emissions Inventory Reporting Deadline Update TCEQ

Ex. 5 Deliberative Process (DP)

**From:** Starfield, Lawrence <Starfield.Lawrence@epa.gov>  
**Sent:** Wednesday, March 18, 2020 8:12 AM  
**To:** Bodine, Susan <bodine.susan@epa.gov>; Irving, John <Irving.John@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>; Johnson, Kathleen <Johnson.Kathleen@epa.gov>; Hindin, David <Hindin.David@epa.gov>; Werner, Jacqueline <Werner.Jacqueline@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Mackey, Cyndy <Mackey.Cyndy@epa.gov>; DeLeon, Rafael <Deleon.Rafael@epa.gov>  
**Cc:** Shiffman, Cari <Shiffman.Cari@epa.gov>  
**Subject:** FW: Point Source Emissions Inventory Reporting Deadline Update TCEQ

Susan,

Ex. 5 Deliberative Process (DP)

Larry  
This message is CONFIDENTIAL, and may contain legally privileged information. If you are not the intended recipient, or believe you received this communication in error, please delete it immediately, do not copy, and notify the sender. Thank you.

**From:** Murray, Suzanne <Suzanne.Murray@haynesboone.com>  
**Sent:** Tuesday, March 17, 2020 7:28 PM  
**To:** Starfield, Lawrence <Starfield.Lawrence@epa.gov>; cheryl.seager@epa.gov; Gilrein, Stephen <gilrein.stephen@epa.gov>  
**Subject:** Fwd: Point Source Emissions Inventory Reporting Deadline Update TCEQ

Sorry for the interruption, but folks are asking if EPA has anything similar in the works for reports due March 31? TRI, DMR etc?  
Many thanks, and hope you are both well.

**Date:** March 17, 2020 at 6:21:45 PM CDT  
**To:** "Murray, Suzanne" <Suzanne.Murray@haynesboone.com>  
**Subject:** Fwd: Point Source Emissions Inventory Reporting Deadline Update

EXTERNAL: Sent from outside haynesboone

Sent from my iPhone  
Begin forwarded message:

**From:** Texas Commission on Environmental Quality <tceq@service.govdelivery.com>

**Date:** March 17, 2020 at 5:28:37 PM CDT

**To:** Ex. 6 Personal Privacy (PP)

**Subject:** Point Source Emissions Inventory Reporting Deadline Update

**Reply-To:** [tceq@service.govdelivery.com](mailto:tceq@service.govdelivery.com)

Per 30 TAC 101.10(e), point source emissions inventories (EIs) are due March 31 or as directed by the commission. Due to COVID-19 and reduced staff in the workplace, the TCEQ will exercise enforcement discretion and consider 2019 point source EIs submitted on or before April 30, 2020 as timely received. The agency will consider additional enforcement discretion regarding this deadline as conditions warrant in response to COVID-19.

Please contact the Emissions Assessment Section helpline at 512-239-1773 or via email at [psinvent@tceq.texas.gov](mailto:psinvent@tceq.texas.gov) with any questions.

---

Update your subscriptions, modify your password or e-mail address, or stop subscriptions at any time on your [User Profile Page](#). You will need to use your e-mail address to log in. If you have questions or problems with the subscription service, e-mail [subscriberhelp.govdelivery.com](mailto:subscriberhelp.govdelivery.com).

This service is provided to you at no charge by the Texas Commission on Environmental Quality. Visit us on the web at [www.tceq.texas.gov](http://www.tceq.texas.gov).

How are we doing? Fill out our online customer satisfaction survey at [www.tceq.texas.gov/customersurvey](http://www.tceq.texas.gov/customersurvey)

Take Care of Texas with your own license plate!

CONFIDENTIALITY NOTICE: This electronic mail transmission is confidential, may be privileged and should be read or retained only by the intended recipient. If you have received this transmission in error, please immediately notify the sender and delete it from your system.

**To:** Bodine, Susan[bodine.susan@epa.gov]  
**From:** Mascarenhas, Brendan[Brendan\_Mascarenhas@americanchemistry.com]  
**Sent:** Tue 3/24/2020 9:47:52 PM (UTC)  
**Subject:** OECA Guidance

Hi Susan,

I hope you’ve been keeping well. I realize this must be a very hectic time for you all at OECA and I apologize for any disruption. If you have a moment, I wanted to briefly check in with you on something—ACC has been receiving a significant amount of inquiries on potential guidance from OECA addressing enforcement discretion during the COVID-19 crisis. Additionally, a note from EPA’s Smart Sectors staff also indicated that something may be coming soon. Is there any timeframe on such a guidance? I would greatly appreciate any information you could share. Again, apologies for any disruption, and we really appreciate the work you and your staff have been doing during this time. Thanks very much.

Regards,  
Brendan

**Brendan Mascarenhas** | American Chemistry Council  
Director, Regulatory and Technical Affairs  
[Brendan\\_Mascarenhas@americanchemistry.com](mailto:Brendan_Mascarenhas@americanchemistry.com)  
700 2<sup>nd</sup> Street NE | Washington, D.C. | 20002  
O: (202) 249-6423  
[www.americanchemistry.com](http://www.americanchemistry.com)

+++++ This message may contain confidential information and is intended only for the individual named. If you are not the named addressee do not disseminate, distribute or copy this email. Please notify the sender immediately by email if you have received this email by mistake and delete this email from your system. E-mail transmission cannot be guaranteed to be secure or error-free as information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete, or contain viruses. The sender therefore does not accept liability for any errors or omissions in the contents of this message which arise as a result of email transmission. American Chemistry Council, 700 – 2nd Street NE, Washington, DC 20002, [www.americanchemistry.com](http://www.americanchemistry.com)

**To:** Bodine, Susan[bodine.susan@epa.gov]  
**From:** Leopold, Matt (OGC)[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=4E5CDF09A3924DADA6D322C6794CC4FA-LEOPOLD, MA]  
**Sent:** Thur 3/26/2020 7:01:20 PM (UTC)  
**Subject:** FW: Expedited Review by 8:00 am Tomorrow (3/26): EPA's COVID-19 Implications for EPA's Enforcement and Compliance Assurance Program  
COVID19 Policy final draft - cmts.docx

Looks like Andy's comments were lost. See attached. Just take if helpful.

**Matthew Z. Leopold**  
General Counsel  
U.S. Environmental Protection Agency  
(202) 564-8040

---

**From:** Varcoe, Andrew R. EOP/WHO [Ex. 6 Personal Privacy (PP)]  
**Sent:** Thursday, March 26, 2020 2:56 PM  
**To:** Leopold, Matt (OGC) <Leopold.Matt@epa.gov>  
**Subject:** FW: Expedited Review by 8:00 am Tomorrow (3/26): EPA's COVID-19 Implications for EPA's Enforcement and Compliance Assurance Program

Just in case these got lost somehow. Don't want to slow the train down. At this point I completely defer to OECA.

---

**From:** Varcoe, Andrew R. EOP/WHO  
**Sent:** Wednesday, March 25, 2020 11:51 PM  
**To:** Jones, Danielle Y. EOP/OMB <[Ex. 6 Personal Privacy (PP)]>  
**Cc:** Beck, Nancy B. EOP/WHO [Ex. 6 Personal Privacy (PP)]; Davis, May M. EOP/WHO [Ex. 6 Personal Privacy (PP)]  
**Subject:** RE: Expedited Review by 8:00 am Tomorrow (3/26): EPA's COVID-19 Implications for EPA's Enforcement and Compliance Assurance Program

Danielle,  
Some quick, discrete edits and comments on the attached, [Ex. 5 Deliberative Process (DP)]  
[Ex. 5 Deliberative Process (DP)] Many of the entities are for clarity; a few are legal in nature.  
Andy  
\*\*\*\*

March 20, 2020

Brittany Bolen  
Assistant Administrator  
Office of Policy, Mail code: 1804A

Susan Bodine  
Assistant Administrator  
Office of Enforcement & Compliance Assurance, Mail code: 2201A

U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue NW  
Washington, DC 20460

**Request for Guidance and Regulatory/Enforcement Discretion in Light of COVID-19 Crisis Response**

Dear Ms. Bolen and Bodine:

On behalf of the Portland Cement Association (PCA) and the larger cement manufacturing industry, let me express my sincere appreciation for the work you and your staff are doing to maintain open lines of communication with the regulated community and provide guidance and flexibility that will allow our members to continue providing critical materials and products while protecting human health and the environment.<sup>1</sup> These principles of transparency and flexibility will be more important than ever as the cement industry and other mining sectors grapple with the emerging COVID-19 crisis.

Increasingly, the COVID-19 crisis and necessary government and site-specific response activities are impairing the ability of facility operators to conduct certain routine and periodic tests, training, and reporting activities. The Portland Cement Association (PCA) and its Members are indicating that staff, contractors, and materials they rely on to conduct testing, calibration, quality assurance activities, and lab activities are unavailable due to travel restrictions, quarantine and lockdown requirements, and supply chain disruptions. Other traditional ways of conducting regulatory reviews, public meetings, and inspections may be impacted as well. This will only increase as staff, contractors, and federal officials are directly affected, either through illness or quarantine, and as federal and state officials impose more extensive restrictions. PCA is presenting these concerns to you as your Office develops enforcement guidance to respond to this crisis.

---

<sup>1</sup> Founded in 1916, PCA is the voice of the U.S. cement manufacturing industry and the widely recognized authority on the technology, economics, and application of cement manufacturing. It represents more than 91% of the U.S. cement manufacturing capacity. PCA members cement manufacturing facilities in 35 states and related cement and concrete operations in all 50 states, servicing every Congressional district.

PCA seeks compliance flexibility and enforcement discretion with respect to the timing, enforcement, and conduct of regulatory compliance activities in the following areas:

- Air
  - Delay or waive stack testing and any QA activities involving continuous emission monitors (CGAs, RATAs) required in 2020 due to inability of contractors to travel and operate within the plant and the unavailability of laboratory staff to conduct analyses
  - Elimination of routine CEM QA procedures where continuous supply of calibration gases cannot be secured (hospitals and medical centers are being given priority for some gases)
  - Use of a certified NIST-traceable thermocouple for APCD inlet temperature monitoring because third-party contractor may not be able to properly calibrate in time for next quarter due to reduced contractor staff (could still use the uncertified t-couple)
  - Delivery by vendors of materials needed for air pollution control equipment (ammonia, dust collector bags, etc.) in conducting required monitoring and control measures due to travel restrictions
- Water
  - Extend or waive NPDES outfall sampling requirements due to external laboratory staff being unavailable to conduct analyses during required sample hold times
  - Extend or waive groundwater sampling activities typically done by external consultants at CKD landfills and other areas
- Oil Storage
  - Extend or waive tank integrity testing deadlines due to contractor not able to travel to plant
- Waste
  - Waive or extend requirement to ship offsite within 12 months should plant limit contractors in/out of plant or contractor unable to pick it up due to travel restrictions

## Training

- Waive or extend CAA, CWA and RCRA training requirements for retraining staff due to social distancing and limitation of people in single place (in-person meetings being banned by companies in compliance with federal and state guidelines) and impracticability or unavailability of virtual training resources.
- Waive or extend Method 9 Visible Emissions (VE) Evaluator Certifications: these are six-month recertifications and many VE readers may be up for recertification during this period. Due to social distancing, it will be difficult to conduct the recertification but trained operators on site can still conduct the VE testing.



- Waive or extend training requirements for conducting hazardous waste storage for regulated generators if trained staff are unavailable. Documented inspections could still be conducted, just potential that there are not trained staff available.

#### Reporting

- Waive or extend deadlines for certain reporting requirements. It will be difficult to comply with many reporting requirements during this period of social distancing and travel restrictions. Staff working from home may not be able to access emissions or other environmental data and staff may not be able to travel to the plants to collect and review all hard copy records. Such reporting that plants may not be able to complete and would need flexibility include the following:
  - Semi-annual NESHAP report and Title V operating permit report
  - Criteria and Hazardous Air Pollutant Emissions
  - GHG
  - TRI

PCA appreciates the opportunity to express our members' compliance concerns in these uncertain times and we stand ready to work with you on these and other implementation issues that arise in the coming weeks. If you have any questions regarding these comments, please feel free to contact Louis Baer at 202-719-1981 or [lbaer@cement.org](mailto:lbaer@cement.org).

Sincerely,



Charles L. Franklin  
Vice President & Counsel  
Government Affairs

CC: EPA Smart Sector Team

March 24, 2020

The President  
The White House  
1600 Pennsylvania Ave, NW  
Washington, DC 20500

Dear Mr. President:

On behalf of the Portland Cement Association (PCA)<sup>1</sup> and the larger cement manufacturing industry, we would like to thank you for your leadership in our nation's response to the global crisis arising from the COVID-19 pandemic. Increasingly, the COVID-19 crisis and necessary government response activities, including travel restrictions, shelters in place, quarantines, and other social distancing methods, pose challenges to the cement industry which produces essential materials that build and maintain our nation's critical infrastructure, such as roads, bridges, tunnels, hospitals, buildings, pipelines, dams, levees, and water treatment facilities. Maintaining our nation's critical infrastructure is vital. We must continue developing and improving public works projects that are essential for delivering needed medical supplies, food and goods, clean water, and energy to the American people as we address this pandemic.

In this crisis, the Administration should recognize that the cement industry provides essential building materials for our critical infrastructure and, as such, should designate the industry as an essential and critical manufacturing industry. In addition, PCA has also been working with regulatory agencies, the U.S. Environmental Protection Agency (EPA) and the Mine Safety & Health Administration (MSHA), to identify specific areas where compliance flexibility and enforcement discretion are needed due to containment methods. PCA urges the Administration to issue sound regulatory and enforcement guidance to regulators that allows agencies to address the extraordinary circumstances our nation is experiencing and cement manufacturers to produce resources that serve our critical infrastructure needs.

### **Designate Cement as an Essential Industry**

It is critical that the Administration identifies the cement industry as an "essential industry," exempted from any current or future mandatory quarantines. Our member companies must be allowed to leave their homes and continue to produce the building materials for our nation's critical infrastructure.

On March 19, the Department of Homeland Security issued [Guidance on the Essential Critical Infrastructure Workforce](#) and did not explicitly include cement manufacturing in the "Critical

---

<sup>1</sup> Founded in 1916, PCA is the voice of the U.S. cement manufacturing industry and the widely recognized authority on the technology, economics, and application of cement manufacturing. It represents more than 91% of the U.S. cement manufacturing capacity. PCA members cement manufacturing facilities in 35 states and related cement and concrete operations in all 50 states, servicing every Congressional district. Cement and concrete product manufacturing, directly and indirectly, employs approximately 600,000 people in our country, and our collective industries contribute over \$100 billion to our economy. Portland cement is the fundamental ingredient in concrete.

Manufacturing” category. As an essential industry, PCA requests adding the cement industry to the “Critical Manufacturing” category in the Guidance. Deeming the cement manufacturing industry as critical will allow for the continued production of cement, which is a foundational element of concrete used to build and maintain our critical infrastructure. The Administration should also communicate this to the appropriate state and local officials across the nation: the cement industry is a critical manufacturing industry and should be allowed to continue operations.

Further, PCA recommends that your Administration add all facets of the construction industry supply chain as “essential” as it is imperative that the industries that build, design and maintain our nation’s critical infrastructure are able to provide the labor, materials, and support for the construction industry through our nation’s response to the COVID-19 pandemic.

### **Regulatory Compliance Flexibility and Enforcement Discretion**

Both EPA and MSHA leadership and staff deserve praise for maintaining open lines of communication with the regulated community and listening to our members’ compliance concerns while working diligently to develop enforcement guidance in response to the crisis. Going forward, PCA and its members have identified the following areas where additional cooperation, regulatory flexibility, and enforcement discretion will be needed.

#### Environmental Protection Agency

The staff, contractors, and materials PCA members rely on to conduct certain routine compliance activities are currently unavailable due to travel restrictions, quarantine and lockdown requirements, and supply chain disruptions. These compliance activities include the following:

- Routine testing;
- Equipment calibration;
- Quality assurance activities;
- Laboratory analysis; and
- Routine reporting;
- Routine training and recertification.

PCA is seeking compliance flexibility and enforcement discretion from EPA with respect to the timing, enforcement, and conduct of these regulatory compliance activities. Attached is our letter to EPA including the specific compliance areas where flexibility and enforcement discretion are needed. PCA looks forward to EPA’s enforcement guidance in response to the COVID-19 crisis that is expected this week and will follow up with EPA with any specific feedback.

#### Mine Safety and Health Administration

Our members are taking a wide range of proactive measures to maintain safe and healthy workplaces, including limiting travel, limiting in-person meetings, implementing remote work for employees whenever it is feasible, and employing other social distancing and hygiene practices to slow the spread of the virus. As cement manufacturers adjust to maintain their operations and ensure the

health and safety of their workers, certain issues have arisen where additional regulatory flexibility is needed. Broadly, these include asking MSHA to:

- Require inspectors to follow proper social distancing practices;
- Extend timing for training and testing that is required annually;
- Provide additional time for abatement actions and response to document requests;
- Expedite reviews of Petitions for Modifications to mine operation practices.

For the health and safety of both regulators and the regulated community, common-sense practices must be adopted, and flexibility provided so as a community we can adapt to current conditions which will protect this critical industry and allow operations to continue working in a safe and healthy manner. PCA is requesting flexibility and enforcement discretion from MSHA regarding inspections policies and procedures. Please see attached PCA's letter to MSHA on these matters.

The issues we have identified above are certainly subject to reasonable adaptation given the health requirements of the current national emergency and all requested modifications would be consistent with statutory mandates.

#### Conclusion

PCA thanks the Administration for its hard work in combating this threat and we look forward to partnering with you to ensure that the cement industry continues to build our nation's critical infrastructure. Thank you for your consideration of the requests outlined in this letter. If you have any questions regarding this request, please feel free to contact PCA's Senior Vice President of Government Affairs at 202-719-1974 or [soneill@cement.org](mailto:soneill@cement.org).

Sincerely,



Michael (Mike) Ireland  
President and CEO

CC: The Honorable Chad Wolf  
Acting Secretary  
Department of Homeland Security

The Honorable Eugene Scalia  
Secretary  
Department of Labor

The Honorable Andrew Wheeler  
Administrator  
Environmental Protection Agency

**To:** Bodine, Susan[bodine.susan@epa.gov]; Starfield, Lawrence[Starfield.Lawrence@epa.gov]; Irving, John[Irving.John@epa.gov]  
**Cc:** Kelley, Rosemarie[Kelley.Rosemarie@epa.gov]; Johnson, Kathleen[Johnson.Kathleen@epa.gov]; Hindin, David[Hindin.David@epa.gov]; Leff, Karin[Leff.Karin@epa.gov]  
**From:** Koslow, Karin[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D00AA4F4FEAD4A3FA02F0CAFE57ED221-KOSLOW, KARIN]  
**Sent:** Mon 3/23/2020 3:43:28 PM (UTC)  
**Subject:** Follow up to today's call - COVID19 message 03 23 edits re releases.docx  
[COVID19 message 03 23 edits re releases.docx](#)

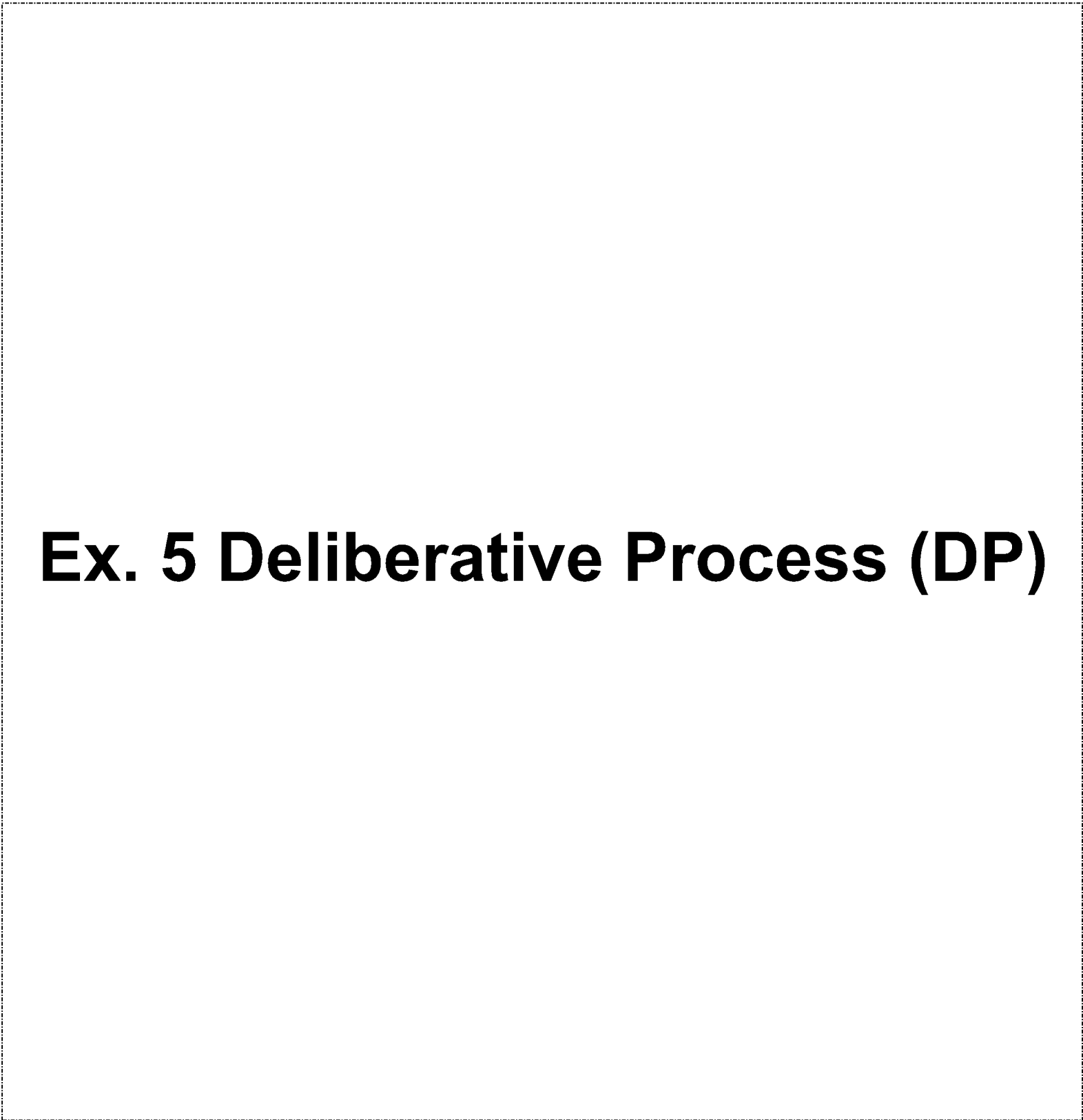
For consideration, as discussed.

Thanks,  
Karin

**To:** Bodine, Susan[bodine.susan@epa.gov]; Starfield, Lawrence[Starfield.Lawrence@epa.gov]; Kelley, Rosemarie[Kelley.Rosemarie@epa.gov]  
**Cc:** Wilwerding, Joseph[Wilwerding.Joseph@epa.gov]; Bohan, Suzanne[bohan.suzanne@epa.gov]; Schefski, Kenneth[Schefski.Kenneth@epa.gov]; Sutin, Elyana[Sutin.Elyana@epa.gov]; Russo, Rebecca[Russo.Rebecca@epa.gov]  
**From:** Dean, Abigail[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C671E5963BB6413EA0DCB58F7F1BF81A-DEAN, ABIGA]  
**Sent:** Wed 3/25/2020 5:48:17 PM (UTC)  
**Subject:** FW: ACTION: COVID19 ED/RC topic tomorrow

All,

Lead Region received several questions in response to Suzanne’s message below. We plan to ask the individuals who submitted questions to raise their issues on today’s ED/RC call. Here is the list of questions we have received so far –



# Ex. 5 Deliberative Process (DP)

We apologize for the short notice.

Thank you,  
LR Team

Abigail Dean  
OECA Lead Region Coordinator  
Senior Assistant Regional Counsel | Office of Regional Counsel | Regulatory Enforcement Section  
Environmental Protection Agency Region 8 | 1595 Wynkoop St. | Mail Code: 8ORC-R | Denver, CO 80202  
Office: (303) 312-6106  
Cell: ( ) Ex. 5 Personal Privacy (PP)

---

**From:** Bohan, Suzanne <bohan.suzanne@epa.gov>  
**Sent:** Tuesday, March 24, 2020 3:38 PM  
**To:** ECAD Directors and Deputies-Designees <ECAD\_Directors\_and\_Deputies-Designees@epa.gov>; Regional Counsels and Deputies <Regional\_Counsels\_and\_Deputies@epa.gov>  
**Cc:** Wilwerding, Joseph <Wilwerding.Joseph@epa.gov>; Dean, Abigail <Dean.Abigail@epa.gov>  
**Subject:** ACTION: COVID19 ED/RC topic tomorrow

ECAD and ORC Colleagues—

Thank you for setting aside time tomorrow for the ED/RC monthly call at 2p eastern. That call will be heavily devoted to COVID-19 issues (see below draft agenda excerpt). We will not hold the separate COVID-19 call at 3 ET but would like to reserve that time on your calendars in case the ED/RC call runs long.

Susan and Larry very much want to hear from everyone on the specific COVID-19 related enforcement issues you are facing. To help us manage the call most efficiently and minimize participants talking over each other, we would appreciate you sending questions and challenges to Joe and Abby ahead of time and we will call on those of you who give us advance comments to share those comments. We will make sure all regions have an opportunity to speak even if you aren't able to provide us feedback prior to the ED/RC call.

# Ex. 5 Deliberative Process (DP)

## Ex. 5 Deliberative Process (DP)

*Suzanne J. Bohan, Director  
Enforcement and Compliance Assurance Division  
U.S. EPA, Region 8  
1595 Wynkoop Street  
Denver, CO 80202  
303.312.6925  
[Bohan.suzanne@epa.gov](mailto:Bohan.suzanne@epa.gov)*

Twitter: [@EPARegion8](https://twitter.com/EPARegion8)  
Facebook: [U.S. EPA Region 8](https://www.facebook.com/USEPARegion8)  
Webpage: [EPA Region 8](https://www.epa.gov/region8) (Mountains and Plains)







March 23, 2020

Susan Bodine  
Assistant Administrator  
Office of Enforcement and Compliance, Air Enforcement Division  
U.S. Environmental Protection Agency  
William Jefferson Clinton Building  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

RE: Waiver Request under Clean Air Act Section 211(c)(4)(C)

Dear Administrator Bodine,

On behalf of our national associations,<sup>1</sup> representing the convenience and fuel retailing industry, we respectfully request the Environmental Protection Agency (EPA) grant a waiver of the federal Reid Vapor Pressure (RVP) requirements that change on May 1, 2020 at the terminal level and June 1, 2020 at the retail level due to the rapid changes in gasoline demand resulting from the COVID-19 health pandemic. Various emergency declarations around the country requiring individuals to limit travel, for both work and pleasure, and gasoline demand is falling dramatically. This creates a unique challenge for fuel retailers as the industry approaches the May 1, 2020, transition date.

With significant amounts of winter grade fuel remaining in tanks, terminals, and pipelines, and the inability to sell it after the May 1, 2020 transition date, terminal operators will have limited capacity to take loads of summer grade fuel. If terminal operators cannot take the summer grade fuel, the pipelines are expected to back up. Eventually, refineries will be forced to shut down production. These problems may be exacerbated for pipelines that ship both gasoline and diesel

---

<sup>1</sup> NACS represents the convenience industry, which has more than 152,720 stores in the United States (121,998 of which sell motor fuel) and employs approximately 2.4 million workers. NATSO currently represents more than 3,000 travel plazas and truck stops nationwide, comprised of both national chains and small, independent locations. PMAA member associations represent wholesalers and retailers of gasoline, diesel, heating oil, lubricants and renewable fuels. Additionally, these companies supply motor fuels to 40,000 independently owned retail outlets. SIGMA is the national trade association representing the most successful, progressive, and innovative fuel marketers and chain retailers in the United States and represents a diverse membership of approximately 260 independent chain retailers and marketers of motor fuel. Collectively, the associations' members supply more than 90 percent of the motor fuel in the United States.

through the same pipes as backups in gasoline may block diesel fuel (which is not seeing the same drop in demand) from reaching the market. While the drop in gasoline demand will force changes throughout the supply chain, this particular issue can be avoided with a waiver for a fixed, clear period of time to allow marketers to sell through the winter grade fuel on hand today.

EPA, with the concurrence of the Department of Energy, has the statutory authority to issue a waiver under Clean Air Act Section 211(c)(4)(C) to alleviate these concerns. Our associations urge EPA to grant this request quickly to allow for certainty to return to the market.

We appreciate your consideration of this request. We look forward to working with you to address this ongoing health crisis.

Sincerely,

National Association of Convenience Stores  
National Association of Truckstop Operators  
Petroleum Marketers Association of America  
Society of Independent Gasoline Marketers of America

**To:** Frank Macchiarola[MacchiarolaF@api.org]  
**Cc:** Bodine, Susan[bodine.susan@epa.gov]; Bolen, Brittany[bolen.brittany@epa.gov]; Bill Koetzle[KoetzleB@api.org]; Howard Feldman[Feldman@api.org]  
**From:** Gunasekara, Mandy[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F639EA28AF4C455493939E3129260707-GUNASEKARA,]  
**Sent:** Tue 3/24/2020 1:24:48 PM (UTC)  
**Subject:** Re: API Letter to Administrator Wheeler 3/23/20

Thank you, Frank. This is very helpful. Will be in touch.

Sent from my iPhone

On Mar 23, 2020, at 4:49 PM, Frank Macchiarola <MacchiarolaF@api.org> wrote:

Please find attached a letter from API to Administrator Wheeler dated 3/23/20 regarding non-essential compliance discretion and critical infrastructure designations. Also, please find attached a referenced letter from API's Mike Sommers to President Donald J. Trump of 3/20/20. Please let me know if you have any questions. Thank you for your attention to this matter.

Best,

Frank

<Letter to Admin Wheeler 3.23.20-final copy.pdf>

<3.20.2020 API Letter to President Trump.pdf>

**To:** Bodine, Susan[bodine.susan@epa.gov]  
**From:** Bailey-Morton, Ethel[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=9B33DD651FA04119BE02B7B6B151FF91-BAILEY, ETHEL]  
**Sent:** Fri 3/20/2020 3:49:36 PM (UTC)  
**Subject:** phone call

Timothy Hunt  
American Forest and Paper Association  
Re: Compliance activities regarding the air with Covid-19 (?)  
(202) 329-6844

*Ethel Bailey-Morton*

Program Specialist  
U.S. Environmental Protection Agency  
Office of Enforcement and Compliance Assurance  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460  
(202) 564-5149  
(202) 501-3842 fax  
[Bailey-Morton.ethel@epa.gov](mailto:Bailey-Morton.ethel@epa.gov)

**To:** Kowalski, Edward[Kowalski.Edward@epa.gov]; Bodine, Susan[bodine.susan@epa.gov]  
**From:** Hladick, Christopher[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B82D04419C42423A97BD7624A3A09908-HLADICK, CH]  
**Sent:** Tue 3/24/2020 2:14:30 AM (UTC)  
**Subject:** Fwd: Correspondence from AOGA re COVID-19  
[image002.jpg](#)  
[ATT00001.htm](#)  
[EPA - Regional Admin.pdf](#)  
[ATT00002.htm](#)

FYI

Sent from my iPhone

Begin forwarded message:

**From:** Patrick Bergt <bergt@aoga.org>  
**Date:** March 23, 2020 at 4:55:40 PM PDT  
**To:** "Hladick, Christopher" <hladick.christopher@epa.gov>  
**Cc:** "moriarty@aoga.org" <moriarty@aoga.org>  
**Subject:** Correspondence from AOGA re COVID-19

Dear Regional Administrator Hladick,

Attached, please find correspondence from Kara Moriarty. If you have any questions or concerns, do not hesitate to contact me. Ms. Moriarty is cc'd hereto.

Sincerely,

**Patrick N. Bergt**  
Regulatory and Legal Affairs Manager  
Alaska Oil and Gas Association  
121 W. Fireweed Lane, Ste 207  
Anchorage, AK 99503  
D: 907.222.9604  
C: 907.917.9171  
[bergt@aoga.org](mailto:bergt@aoga.org)

## Alaska Oil and Gas Association

---



121 W. Fireweed Lane, Suite 207  
Anchorage, AK 99503-2035  
Phone: (907) 272-1481 Fax: (907) 279-8114  
Email: [moriarty@aoga.org](mailto:moriarty@aoga.org)  
*Kara Moriarty, President & CEO*

SENT ELECTRONICALLY

March 23, 2020

Regional Administrator Christopher Hladick  
Environmental Protection Agency, Region 10  
1200 6<sup>th</sup> Avenue  
Seattle, Washington 98101

RE: COVID-19 Response and Preparedness

Dear Regional Administrator Hladick,

The Alaska Oil and Gas Association (AOGA) is the professional trade association that represents the majority of exploring, producing, refining and transportation companies in Alaska. This letter is being sent to various agencies and local officials to communicate industry's response to and preparedness for the coronavirus (COVID-19) pandemic.

As the world grapples with COVID-19, the safety and well-being of Alaskans, as well as Alaska's oil and gas employees and contractors, is the industry's highest priority. As we face the challenge of operating in the pandemic environment, we look forward to working collaboratively with local, state and federal officials to meet regulatory requirements while we also focus on the safety of our personnel, as well as safely producing, transporting and refining oil and gas in Alaska.

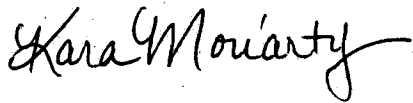
As this pandemic rapidly evolves, we are closely monitoring the spread of COVID-19 and our member companies are responding to guidance and mandates provided by the World Health Organization, US Centers for Disease Control, and state and local health departments by implementing several prevention and screening measures. Additional measures may be necessary as the disease continues to spread across the country and here in Alaska.

The industry is categorized as providing "critical infrastructure" by the U.S. Department of Homeland Security, and as such, it could cause irreversible harm to completely shut down our operations. In addition to screening measures, the industry is also doing everything it can to limit the number of personnel at our facilities to minimize the risk of COVID-19 spreading amongst our workforce.

To assist the industry in keeping our personnel safe and our facilities operational, we respectfully request the following from all agency personnel:

- Participate in current company screening processes, which for some companies will include no access to the facility if the agency official has been out of state in the past 14 days. Please check with each operator as policies do vary between each company.
- Limit travel to any oil, gas and refining facility to only business-critical affairs, which may mean postponing non-essential drills and/or inspections.
- Utilize teleconference and/or virtual communications as much as practicable.

Sincerely,

A handwritten signature in black ink, reading "Kara Moriarty". The signature is written in a cursive, flowing style with a long horizontal stroke at the end.

Kara Moriarty  
President/CEO

March 20, 2020

Administrator Andrew Wheeler  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue NW  
Washington, DC 20460

Administrator Wheeler:

The undersigned agricultural groups thank you and the Administration for your swift action to address concerns surrounding the COVID-19 pandemic. As Americans begin to realize the potential long-term threat this pandemic presents to their personal safety, EPA plays an important role in ensuring that America's farms remain safe. Farms across the nation have closed their gates to visitors and other off-site guests to limit the spread of the virus to essential operational staff at farms and ranches. Respecting this effort, we request that the EPA issue a "no action" assurance, suspending site inspections of Clean Water Act 402 permitted agricultural operations to protect the safety of critical infrastructure workforce employees, including farm workers.

EPA's long-standing policy related to enforcement during emergencies allows the agency to make "no action" assurances in an extremely unusual circumstance where an assurance is clearly necessary to serve the public interest and which no other mechanism can adequately address the concern. The COVID-19 pandemic and its effects are clearly unprecedented. Agricultural workers, as outlined by the Department of Homeland Security, are critical infrastructure workers who need protection by all levels of government. Such protection serves the public interest by ensuring that agricultural workers continue to maintain the American food supply without unnecessary regulatory burden. A "no action" assurance is the only way to make clear EPA's intent to provide industry-wide relief.

On March 19, 2020, the Department of Homeland Security Cybersecurity and Infrastructure Security Agency (DHS-CISA) released its guidance identifying essential critical infrastructure workers. These workers identified by DHS-CISA conduct a range of operations and services that are essential to continued critical infrastructure viability. Food and agriculture workers are included in this list. The guidance document advises states and localities to encourage, rather than hinder, the ability of these industries to effectively continue their work. Other federal and state administrative agencies have provided temporary regulatory leniency to reduce constraints on these critical industries. For example, the Department of Transportation has suspended hours of service limitations for livestock haulers, and states across the nation have suspended unannounced inspections for food processors and manufacturers. EPA can further the administration's effort to reduce regulatory burdens by suspending inspection requirements during the pendency of the COVID-19 pandemic.

The undersigned groups urge EPA to make a "no action" assurance. Thank you for your consideration of America's agricultural producers.



Sincerely,

National Cattlemen's Beef Association

National Pork Producers Council

U.S. Poultry & Egg Association

National Milk Producers Federation

United Egg Producers

National Council of Farmer Cooperatives

American Farm Bureau Federation

Cc: Susan Bodine, Assistant Administrator, Office of Enforcement and Compliance Assurance

Enclosure: EPA 'No Action' Assurance Memo



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

EC-P-1998-125

GM #34  
SE. 1-5

NOV 16 1984

OFFICE OF  
ENFORCEMENT AND  
COMPLIANCE MONITORING

MEMORANDUM

SUBJECT: Policy Against "No Action" Assurances  
FROM: Courtney M. Price *Courtney M. Price*  
Assistant Administrator for Enforcement  
and Compliance Monitoring  
TO: Assistant Administrators  
Regional Administrators  
General Counsel  
Inspector General

This memorandum reaffirms EPA policy against giving definitive assurances (written or oral) outside the context of a formal enforcement proceeding that EPA will not proceed with an enforcement response for a specific individual violation of an environmental protection statute, regulation, or other legal requirement.

"No action" promises may erode the credibility of EPA's enforcement program by creating real or perceived inequities in the Agency's treatment of the regulated community. This credibility is vital as a continuing incentive for regulated parties to comply with environmental protection requirements.

In addition, any commitment not to enforce a legal requirement against a particular regulated party may severely hamper later enforcement efforts against that party, who may claim good-faith reliance on that assurance, or against other parties who claim to be similarly situated.

This policy against definitive no action promises to parties outside the Agency applies in all contexts, including assurances requested:

- both prior to and after a violation has been committed;
- on the basis that a State or local government is responding to the violation;

- ° on the basis that revisions to the underlying legal requirement are being considered;
- ° on the basis that the Agency has determined that the party is not liable or has a valid defense;
- ° on the basis that the violation already has been corrected (or that a party has promised that it will correct the violation); or
- ° on the basis that the violation is not of sufficient priority to merit Agency action.

The Agency particularly must avoid no action promises relating either to violations of judicial orders, for which a court has independent enforcement authority, or to potential criminal violations, for which prosecutorial discretion rests with the United States Attorney General.

As a general rule, exceptions to this policy are warranted only

- ° where expressly provided by applicable statute or regulation (e.g., certain upset or bypass situations)
- ° in extremely unusual cases in which a no action assurance is clearly necessary to serve the public interest (e.g., to allow action to avoid extreme risks to public health or safety, or to obtain important information for research purposes) and which no other mechanism can address adequately.

Of course, any exceptions which EPA grants must be in an area in which EPA has discretion not to act under applicable law.

This policy in no way is intended to constrain the way in which EPA discusses and coordinates enforcement plans with state or local enforcement authorities consistent with normal working relationships. To the extent that a statement of EPA's enforcement intent is necessary to help support or conclude an effective state enforcement effort, EPA can employ language such as the following:

"EPA encourages State action to resolve violations of the \_\_\_\_\_ Act and supports the actions which \_\_\_\_\_ (State) is taking to address the violations at issue. To the extent that the State action does not satisfactorily resolve the violations, EPA may pursue its own enforcement action."

I am requesting that any definitive written or oral no action commitment receive the advance concurrence of my office. This was a difficult decision to reach in light of the valid concerns raised in comments on this policy statement; nevertheless, we concluded that Headquarters concurrence is important because the precedential implications of providing no action commitments can extend beyond a single Region. We will attempt to consult with the relevant program office and respond to any formal request for concurrence within 10 working days from the date we receive the request. Naturally, emergency situations can be handled orally on an expedited basis.

All instances in which an EPA official gives a no action promise must be documented in the appropriate case file. The documentation must include an explanation of the reasons justifying the no action assurance.

Finally, this policy against no action assurances does not preclude EPA from fully discussing internally the prosecutorial merit of individual cases or from exercising the discretion it has under applicable law to decide when and how to respond or not respond to a given violation, based on the Agency's normal enforcement priorities.

cc: Associate Enforcement Counsels  
OECM Office Directors  
Program Compliance Office Directors  
Regional Enforcement Contacts

**DONNA H. CARVALHO**  
**Senior Counsel**  
*Legal Compliance, Environmental & Regulatory*



**PHILLIPS 66 Company**  
2331 CityWest Boulevard  
Houston, Texas 77042  
Phone: (832) 765-1214  
Email: [Donna.H.Carvalho@p66.com](mailto:Donna.H.Carvalho@p66.com)

March 9, 2020

**Via UPS Overnight Mail**

Chief  
Environmental Enforcement Section  
Environment and Natural Resources Division  
United States Department of Justice  
ATTN: Thomas Carroll  
150 M Street NE, Room 5.113  
Washington, DC 2004-7611

Chief, Environmental Bureau  
Illinois Attorney General's Office  
500 South Second Street  
Springfield, IL 62706

Maureen Wozniak, Counsel  
Illinois EPA  
1021 N. Grand Ave. East  
P.O. Box 19276  
Springfield, IL 62794-9276

Compliance Tracker (AE-17J)  
Air Compliance and Compliance  
Assurance Branch  
U.S. EPA Region 5  
77 W. Jackson Blvd  
Chicago, Illinois 60604

Manager,  
Compliance and Enforcement Section  
Illinois EPA  
1021 N. Grand Ave. East  
P.O. Box 19276  
Springfield, IL 62794-9276

**RE: Force Majeure Notifications**  
**Pursuant to Paragraph 129 of Civil Action No. 3:18-cv-01484-SMY-GCS**  
**Phillips 66 Company – Wood River Refinery**

Dear Ladies and Gentlemen:

On February 27<sup>th</sup>, the U.S. Centers for Disease Control and Prevention (CDC) announced the first known community spread case of the novel coronavirus COVID-19 within the United States (U.S). Since then approximately 150 other cases have been identified within the U.S. (See <https://www.cnn.com/2020/02/27/health/us-cases-coronavirus-community-transmission/index.html><sup>1</sup> and <https://www.cdc.gov/coronavirus/2019-ncov/cases-in-us.html>.) Phillips 66 Company is conducting pandemic planning and continues to monitor the situation. Ultimately, the transmission and spread of the virus could impact the Company's performance with the requirements of the above-referenced Consent Decree. No known impact has occurred yet.

---

<sup>1</sup> Updated 6:15 AM ET, Fri February 28, 2020

Paragraph 129 of the above referenced Consent Decree (Civil Action **3.18-cv-01484-SMY-GCS**) requires Phillips 66 to notify the United States and Illinois, within twenty business days of any event which it knows or should have known could result in a delay or impediment to complying with the Consent Decree.

Based on this requirement Phillips 66 Company is now submitting this force majeure notice. As noted above, there is no known current impact. However, the facility can foresee potential issues if the Wood River Refinery's or its contractors' workforce is directly impacted. Planning to prevent and mitigate these potential issues is ongoing.

#### Potential Delays

Although no delays have occurred yet, one or more of the following delays/impediments could occur depending upon whether and to what extent the Phillips 66 workforce, including that of its contractors, is impacted by the coronavirus (e.g., by infection, quarantine, family emergency, etc.):

- Emissions and waste gas cap compliance related to idling or shutting down and restarting units due to limited onsite personnel or other supply or customer disruptions;
- Emissions due to parts supply interruptions;
- Delays in stack testing due to stack tester unavailability, limited onsite personnel, or not operating in a mode appropriate for stack testing due to personnel, supply or related disruptions;
- Delays in Leak Detection and Repair or Benzene Waste NESHAPS monitoring including fence line monitoring due to contractor unavailability, site access limitations or limited onsite personnel;
- CEMS repairs, calibration or checks due to unavailability of calibration gas supply, limited onsite personnel, contractor unavailability, not operating in a mode appropriate for calibration or testing, or other personnel, supply, or related disruptions; and
- Disruptions in laboratory analysis due to limited onsite personnel or other supply or customer disruptions.

This list is not intended to be all inclusive. It does contain the items that Phillips 66 has pre-identified thus far.

#### Length of Time Delay May Persist

No delay or impediment currently exists. The Company is continuously monitoring the situation and conducting pandemic planning, which includes planning for operating with a reduced workforce and raw material disruptions, if required. If the Wood River Refinery is actually affected, this notice will be updated with more specific information.

#### The Cause of the Delay or Impediment

The cause of the delay or impediment is the ongoing transmission and quick spread of the COVID-19 virus. More information on this virus can be found on the CDC's website at <https://www.cdc.gov/coronavirus/2019-ncov/cases-in-us.html>. The first community spread case was identified on February 27<sup>th</sup>. (See <https://www.cnn.com/2020/02/27/health/us-cases-coronavirus->

[community-transmission/index.html<sup>2</sup>](#).) As the virus continues to be transmitted, it is possible that the Billings Refinery may have workers or contractors out sick or to care for sick family members and/or that the Company will implement additional social distancing measures.

Schedule for and Measures Taken by Phillips 66 to Prevent/Minimize the Delay

Phillips 66 is taking a variety of measures on both a corporate and site-specific level to limit transmission and spread of the virus and its potential impact on Consent Decree compliance. Among these are:

- Continuous monitoring of virus transmission and spread;
- Drills involving working with limited onsite employees;
- Drills involving working remotely;
- Development of company isolation/work-at-home policies;
- Out of office backup plans for key employees;
- Restrictions on business travel.

Please do not hesitate to contact me at the number noted above if you have any questions. This notice will be updated if needed.

Respectfully submitted,

Donna H. Carvalho

ec: [r5ardreporting@epa.gov](mailto:r5ardreporting@epa.gov)  
[Loukeris.constantinos@epa.gov](mailto:Loukeris.constantinos@epa.gov)  
[Gehrig.greg@epa.gov](mailto:Gehrig.greg@epa.gov)  
[Wagner.william@epa.gov](mailto:Wagner.william@epa.gov)  
[Mcauliffe.mary@epa.gov](mailto:Mcauliffe.mary@epa.gov)  
[aarmstrong@atg.state.il.us](mailto:aarmstrong@atg.state.il.us)  
[rcallery@atg.state.il.us](mailto:rcallery@atg.state.il.us)  
[Maureen.Wozniak@Illinois.gov](mailto:Maureen.Wozniak@Illinois.gov)

Cc: Tim E. Goedeker, Environmental Manager HSE Refining  
Dean Maniatis, Refining HSE Manager  
Deputy General Counsel, Legal Compliance, Environmental & Regulatory  
Refinery Manager, WRB Refining LP, Wood River Refinery

---

<sup>2</sup> Updated 6:15 AM ET, Fri February 28, 2020

**To:** Payne, James[payne.james@epa.gov]; Shiffman, Cari[Shiffman.Cari@epa.gov]  
**Cc:** Bodine, Susan[bodine.susan@epa.gov]  
**From:** Irving, John[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A45F241B1CE44B8D9C5EA6FC90925313-IRVING, JOH]  
**Sent:** Tue 3/10/2020 5:17:33 PM (UTC)  
**Subject:** RE: State Requests - CONVID-19 Quarantine Facilities

Thanks, Jim. Copying Susan here.

-- John

John S. Irving  
Deputy Assistant Administrator  
U.S. Environmental Protection Agency  
Office of Enforcement & Compliance Assurance  
Office: (202) 564-2496 / Mobile: Ex. 6 Personal Privacy (PP)

---

**From:** Payne, James <payne.james@epa.gov>  
**Sent:** Tuesday, March 10, 2020 12:59 PM  
**To:** Irving, John <Irving.John@epa.gov>; Shiffman, Cari <Shiffman.Cari@epa.gov>  
**Subject:** Fwd: State Requests - CONVID-19 Quarantine Facilities

Sent from my iPhone  
Begin forwarded message:

**From:** "Payne, James" <payne.james@epa.gov>  
**Date:** March 10, 2020 at 12:35:13 PM EDT  
**To:** "Welton, Patricia" <Welton.Patricia@epa.gov>, "Lewis, Jen" <Lewis.Jen@epa.gov>, "Michaud, John" <Michaud.John@epa.gov>  
**Cc:** "Starfield, Lawrence" <Starfield.Lawrence@epa.gov>, "Kelley, Rosemarie" <Kelley.Rosemarie@epa.gov>, "Brooks, Phillip" <Brooks.Phillip@epa.gov>, "Gray, David" <gray.david@epa.gov>, "Fotouhi, David" <Fotouhi.David@epa.gov>, "Packard, Elise" <Packard.Elise@epa.gov>  
**Subject: Re: State Requests - CONVID-19 Quarantine Facilities**

To Patricia Welton, Acting Regional Counsel, Region 6

Thanks for your note on states requesting assistance with how potential quarantines may affect implementation of and compliance with environmental laws, perhaps with some similarities to hurricane response. You mentioned one Region 6 refinery has submitted a force majeure notice under an existing enforcement consent decree.

As to OGC, connecting you with Jen Lewis and John Michaud, as they oversee OGC legal support team for emergency response. My understanding is that earlier there had been some internal legal preparations related to Ebola.

Sent from my iPhone

On Mar 10, 2020, at 11:36 AM, Welton, Patricia <Welton.Patricia@epa.gov> wrote:

Good Morning

Region 6 is getting questions from our states requesting frameworks for moving forward in the event of Covid-19 quarantines and will likely be asking for expressions of flexibility for a number of requirements. Do you know if there is any national guidance coming out or existing resources we can point states to? As for existing - this seems that it could be similar to a hurricane situation. In an additional note, we have received one Force Majeure notice already from a refinery under CD in



anticipation of a potential event.  
I appreciate any guidance,  
Tricia  
214-665-7327

Rosemarie – I note Larry may be out so sharing this email with you also.

---

**From:** Seager, Cheryl <[Seager.Cheryl@epa.gov](mailto:Seager.Cheryl@epa.gov)>

**Sent:** Tuesday, March 10, 2020 10:28 AM

**To:** Wilwerding, Joseph <[Wilwerding.Joseph@epa.gov](mailto:Wilwerding.Joseph@epa.gov)>; Bohan, Suzanne <[bohan.suzanne@epa.gov](mailto:bohan.suzanne@epa.gov)>; Kelley, Rosemarie <[Kelley.Rosemarie@epa.gov](mailto:Kelley.Rosemarie@epa.gov)>

**Cc:** Welton, Patricia <[Welton.Patricia@epa.gov](mailto:Welton.Patricia@epa.gov)>

**Subject:** FW: State Requests - CONVID-19 Quarantine Facilities

Hi guys – we got this from the DRA – do you know if any other regions have gotten similar requests, and if they have, how they are handling them?

Thanks,  
Cheryl

---

**From:** Gray, David <[gray.david@epa.gov](mailto:gray.david@epa.gov)>

**Sent:** Tuesday, March 10, 2020 10:24 AM

**To:** Seager, Cheryl <[Seager.Cheryl@epa.gov](mailto:Seager.Cheryl@epa.gov)>; Welton, Patricia <[Welton.Patricia@epa.gov](mailto:Welton.Patricia@epa.gov)>

**Subject:** State Requests - CONVID-19 Quarantine Facilities

States are asking about how to send a request seeking federal flexibility or consideration for variances or time extensions in federal rules if regulated facilities are subject to a quarantine. Do we have any guidance?

**To:** Mackey, Cyndy[Mackey.Cyndy@epa.gov]; DeLeon, Rafael[Deleon.Rafael@epa.gov]; Kelley, Rosemarie[Kelley.Rosemarie@epa.gov]; Koslow, Karin[Koslow.Karin@epa.gov]; Hindin, David[Hindin.David@epa.gov]; Badalamente, Mark[Badalamente.Mark@epa.gov]  
**Cc:** Bodine, Susan[bodine.susan@epa.gov]; Irving, John[Irving.John@epa.gov]  
**From:** Starfield, Lawrence[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8A89D6CD217D4254A5879ABECB3F314E-STARFIELD, LAWRENCE]  
**Sent:** Tue 3/10/2020 9:25:02 PM (UTC)  
**Subject:** Fwd: State Requests - CONVID-19 Quarantine Facilities

FYI as you discuss potential approaches in case of quarantines.  
Larry

Sent from my iPhone

Begin forwarded message:

**From:** "Payne, James" <payne.james@epa.gov>  
**Date:** March 11, 2020 at 3:05:13 AM GMT+10:30  
**To:** "Welton, Patricia" <Welton.Patricia@epa.gov>, "Lewis, Jen" <Lewis.Jen@epa.gov>, "Michaud, John" <Michaud.John@epa.gov>  
**Cc:** "Starfield, Lawrence" <Starfield.Lawrence@epa.gov>, "Kelley, Rosemarie" <Kelley.Rosemarie@epa.gov>, "Brooks, Phillip" <Brooks.Phillip@epa.gov>, "Gray, David" <gray.david@epa.gov>, "Fotouhi, David" <Fotouhi.David@epa.gov>, "Packard, Elise" <Packard.Elise@epa.gov>  
**Subject: Re: State Requests - CONVID-19 Quarantine Facilities**

To Patricia Welton, Acting Regional Counsel, Region 6

Thanks for your note on states requesting assistance with how potential quarantines may affect implementation of and compliance with environmental laws, perhaps with some similarities to hurricane response. You mentioned one Region 6 refinery has submitted a force majeure notice under an existing enforcement consent decree.

As to OGC, connecting you with Jen Lewis and John Michaud, as they oversee OGC legal support team for emergency response. My understanding is that earlier there had been some internal legal preparations related to Ebola.

Sent from my iPhone

On Mar 10, 2020, at 11:36 AM, Welton, Patricia <Welton.Patricia@epa.gov> wrote:

Good Morning

Region 6 is getting questions from our states requesting frameworks for moving forward in the event of Covid-19 quarantines and will likely be asking for expressions of flexibility for a number of requirements.

Do you know if there is any national guidance coming out or existing resources we can point states to?

As for existing - this seems that it could be similar to a hurricane situation.

In an additional note, we have received one Force Majeure notice already from a refinery under CD in anticipation of a potential event.

I appreciate any guidance,

Tricia

214-665-7327

Rosemarie – I note Larry may be out so sharing this email with you also.

**From:** Seager, Cheryl <Seager.Cheryl@epa.gov>

**Sent:** Tuesday, March 10, 2020 10:28 AM

**To:** Wilwerding, Joseph <Wilwerding.Joseph@epa.gov>; Bohan, Suzanne <bohan.suzanne@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>

**Cc:** Welton, Patricia <Welton.Patricia@epa.gov>

**Subject:** FW: State Requests - CONVID-19 Quarantine Facilities

Hi guys – we got this from the DRA – do you know if any other regions have gotten similar requests, and if they have, how they are handling them?

Thanks,  
Cheryl

---

**From:** Gray, David <gray.david@epa.gov>

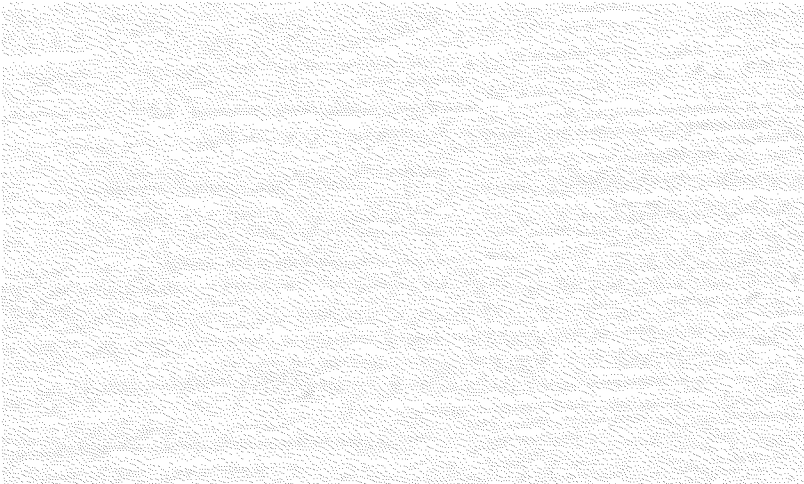
**Sent:** Tuesday, March 10, 2020 10:24 AM

**To:** Seager, Cheryl <Seager.Cheryl@epa.gov>; Welton, Patricia <Welton.Patricia@epa.gov>

**Subject:** State Requests - CONVID-19 Quarantine Facilities

States are asking about how to send a request seeking federal flexibility or consideration for variances or time extensions in federal rules if regulated facilities are subject to a quarantine. Do we have any guidance?

**To:** Bodine, Susan[bodine.susan@epa.gov]; Starfield, Lawrence[Starfield.Lawrence@epa.gov]; Irving, John[Irving.John@epa.gov]  
**Cc:** Hindin, David[Hindin.David@epa.gov]; Dombrowski, John[Dombrowski.John@epa.gov]; Werner, Jacqueline[Werner.Jacqueline@epa.gov]; Johnson, Kathleen[Johnson.Kathleen@epa.gov]; Shiffman, Cari[Shiffman.Cari@epa.gov]; Mirza, Sabah[Mirza.Sabah@epa.gov]; Kadish, Rochele[Kadish.Rochele@epa.gov]; Loving, Shanita[Loving.Shanita@epa.gov]; Bailey-Morton, Ethel[Bailey-Morton.Ethel@epa.gov]; Forster, Rosa[Forster.Rosa@epa.gov]  
**From:** Kadish, Rochele[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=75D217F94F1742E89B58FD7D81EB201B-KADISH, ROCHELE]  
**Sent:** Tue 3/17/2020 9:03:53 PM (UTC)  
**Subject:** OC bi-weekly 3/18/2020 - Agenda and materials  
[CBI docs for inspectors for3-18 OC bi-weekly 3-16-2020.docx](#)  
[KB Tanks National AMP update 03 18 2020.docx](#)  
[Reporting Burden Reduction Ideas as of March 17.docx](#)  
[OECA IO Agenda .docx](#)



Hi – please find attached the Agenda for the OC bi-weekly and the materials. Thank you, Rochele

OC Meeting w/OECA IO  
March 18, 2020, 10:00 – 11:00

## Agenda

# Ex. 5 Deliberative Process (DP)

*Rochele Kadish*

Office of Compliance

Chief of Staff

Certified Professional Coach, EPA Coaches Cadre

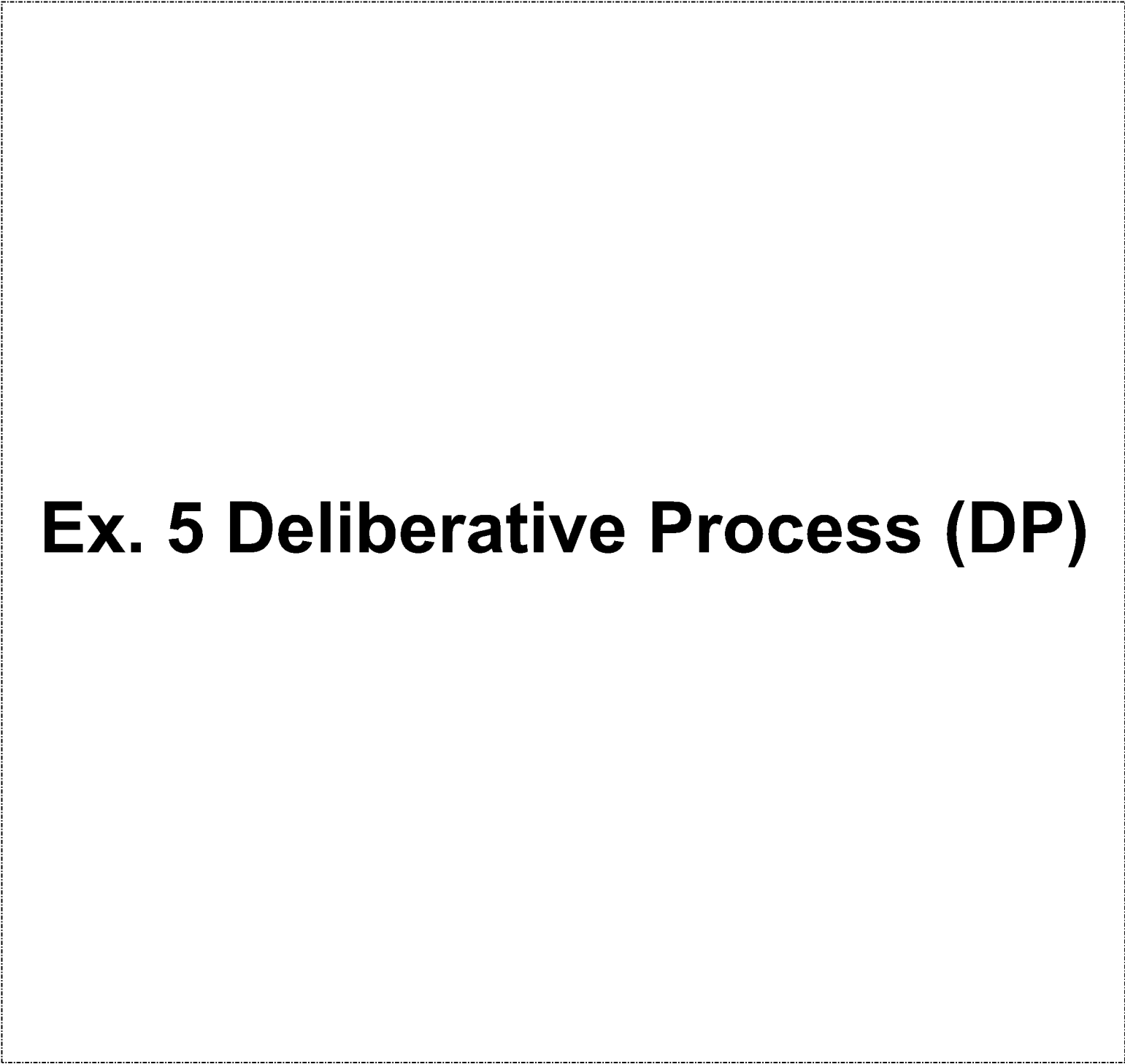
202-564-3106 – Office

Ex. 6 Personal Privacy (PP) – Cell

**To:** Kadish, Rochele[Kadish.Rochele@epa.gov]; Dombrowski, John[Dombrowski.John@epa.gov]; Hindin, David[Hindin.David@epa.gov]; Segall, Martha[Segall.Martha@epa.gov]; Duffy, Rick[Duffy.Rick@epa.gov]; Werner, Jacqueline[Werner.Jacqueline@epa.gov]; Werner, Jacqueline[Werner.Jacqueline@epa.gov]; Mia, Marcia[Mia.Marcia@epa.gov]; Knopes, Christopher[Knopes.Christopher@epa.gov]; Carbone, Chad[Carbone.Chad@epa.gov]  
**Cc:** Bodine, Susan[bodine.susan@epa.gov]; Starfield, Lawrence[Starfield.Lawrence@epa.gov]; Shiffman, Cari[Shiffman.Cari@epa.gov]; Irving, John[Irving.John@epa.gov]; Tran, Victoria[tran.victoria@epa.gov]  
**From:** Mirza, Sabah[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=816BF1F9B67D4892BDAC00DE2EABDA3F-MIRZA, SABAH]  
**Sent:** Wed 3/25/2020 2:51:34 AM (UTC)  
**Subject:** Follow-up items from OC bi-weekly 3/24/20

Hi all,

Here are the follow-up items from today’s OC bi-weekly meeting:



Thanks,  
Sabah

~~~~~

Sabah Mirza, Special Assistant  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue NW, 3207E WJC South  
Washington, DC 20460  
Office: 202-564-8176

---

**From:** Mirza, Sabah

**Sent:** Wednesday, March 18, 2020 11:17 AM

**To:** Kadish, Rochele <Kadish.Rochele@epa.gov>; Dombrowski, John <Dombrowski.John@epa.gov>; Hindin, David <Hindin.David@epa.gov>; Segall, Martha <Segall.Martha@epa.gov>; Duffy, Rick <Duffy.Rick@epa.gov>; Werner, Jacqueline <Werner.Jacqueline@epa.gov>; Werner, Jacqueline <Werner.Jacqueline@epa.gov>; Mia, Marcia <Mia.Marcia@epa.gov>; Knopes, Christopher <Knopes.Christopher@epa.gov>; Carbone, Chad <Carbone.Chad@epa.gov>

**Cc:** Bodine, Susan <bodine.susan@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Shiffman, Cari <Shiffman.Cari@epa.gov>; Irving, John <Irving.John@epa.gov>; Tran, Victoria <tran.victoria@epa.gov>

**Subject:** Follow-up items from OC bi-weekly 3/18/20

Hi all,

Here are the follow-up items from today's OC bi-weekly meeting:

## Ex. 5 Deliberative Process (DP)

Thanks,  
Sabah

~~~~~

Sabah Mirza, Special Assistant  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue NW, 3207E WJC South  
Washington, DC 20460  
Office: 202-564-8176

Kenneth E. Wagner  
Secretary of Energy & Environment



J. Kevin Stitt  
Governor

STATE OF OKLAHOMA  
OFFICE OF THE  
SECRETARY OF ENERGY & ENVIRONMENT

March 19, 2020

Andrew Wheeler  
Administrator  
U.S. Environmental Protection Agency  
Office of the Administrator  
1200 Pennsylvania Avenue, N.W. 1101A  
Washington, DC 20460

**Re: Request of the State of Oklahoma for RVP Fuel Waiver under the Clean Air Act**

Administrator Wheeler:

On behalf of the Governor Kevin Stitt and State of Oklahoma, I respectfully request that U.S. EPA immediately grant a 30-day Reid Vapor Pressure ("RVP") fuel waiver as authorized by the Clean Air Act to the State of Oklahoma. There is growing concern within our state that due to the current uncertainty in our markets that the required transition from winter grade to summer grade gasoline will create undue hardship for this industry that is vital to our State and Nation's economy.

Under the current requirements, summer grade gasoline is required to be in place at our terminals by May 1, 2020. A waiver is necessary because Oklahoma's current gas inventories remain high with winter grade gasoline which will make it extremely difficult to transition our tanks from winter to summer grade to meet the deadline. Additionally, the expectation that demand will fall sharply in response to the current public health crisis will create even more strain to meet this requirement. A 30-day waiver will ensure that Oklahoma will have an adequate volume of gasoline that can be distributed from our terminals and minimizes the potential of terminal outages.

Therefore, I respectfully request that U.S. EPA grant an RVP Fuel Waiver as authorized by the Clean Air Act until June 1, 2020. It is only through the continued cooperation of the State and Federal government that we can meet the challenges of the coming months with as little turmoil as possible.

Please let me know if you have any questions.

Respectfully Submitted,

Kenneth E. Wagner  
Secretary of Energy & Environment

204 N. ROBINSON, SUITE 1010 • OKLAHOMA CITY, OK 73102 • 405-522-7099

March 19, 2020

Susan Bodine  
Assistant Administrator  
Office of Enforcement and Compliance– Air Enforcement Division  
US Environmental Protection Agency  
William Jefferson Clinton Building  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

**RE: Waiver Request under Clean Air Act Section 211(c)(4)(C)**

Dear Administrator Bodine,

The New England Convenience Store & Energy Marketers Association (NECSEMA) represents gas stations and wholesale motor fuels distributors throughout New England.

The national health emergency related to Covid-19, has, among other things, drastically reduced motor fuel purchases as motorists dramatically alter their lives and travel less. As we approach the federal RVP conversion deadlines of May 1 for terminal operators and June 1 for retail gas stations, we feel a waiver of the deadline is crucial. At this stage, a 30-day extension on both deadlines would be appropriate with the understanding an additional extension may be necessary.

EPA, with the concurrence of the Department of Energy, is authorized to issue a fuels waiver under Clean Air Act Section 211(c)(4)(C). Please consider this request as extremely time sensitive as affected businesses will need to know how to proceed very soon.

Respectfully,



Jonathan Shaer  
Executive Director

CC: Glenn Keith, Director– Air and Climate Division, MA Dept. of Environmental Protection  
Jeff Crawford, Director – Bureau of Air Quality, ME Dept. of Environmental Protection  
Mike Fitzgerald, Asst. Director – Air Resources Division, NH Dept. of Environmental Services  
Laurie Grandchamp, Chief – Office of Air Resources, RI Dept. of Environmental Maintenance  
Tracy Babbidge, Bureau Chief – Bureau of Air Management, CT Dept. of Energy  
Environmental Protection

1044 Central Street, Suite 203  
Stoughton, MA 02072  
(781) 297 – 9600



**To:** Kelley, Rosemarie[Kelley.Rosemarie@epa.gov]; Koslow, Karin[Koslow.Karin@epa.gov]; Buterbaugh, Kristin[Buterbaugh.Kristin@epa.gov]; Hindin, David[Hindin.David@epa.gov]; Mackey, Cyndy[Mackey.Cyndy@epa.gov]; Pollins, Mark[Pollins.Mark@epa.gov]; Theis, Joseph[Theis.Joseph@epa.gov]; Bahk, Benjamin[Bahk.Benjamin@epa.gov]; Denton, Loren[Denton.Loren@epa.gov]; Raack, Pete[Raack.Pete@epa.gov]; Holmes, Carol[Holmes.Carol@epa.gov]; Milton, Philip[Milton.Philip@epa.gov]; Sullivan, Greg[Sullivan.Greg@epa.gov]; Saenz, Diana[Saenz.Diana@epa.gov]; Bellot, Michael[Bellot.Michael@epa.gov]; Crossland, Andy[Crossland.Andy@epa.gov]  
**Cc:** Bodine, Susan[bodine.susan@epa.gov]; Starfield, Lawrence[Starfield.Lawrence@epa.gov]; Johnson, Kathleen[Johnson.Kathleen@epa.gov]; Shiffman, Cari[Shiffman.Cari@epa.gov]; Irving, John[Irving.John@epa.gov]; Tran, Victoria[tran.victoria@epa.gov]  
**From:** Mirza, Sabah[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=816BF1F9B67D4892BDAC00DE2EABDA3F-MIRZA, SABAH]  
**Sent:** Thur 3/19/2020 8:39:42 PM (UTC)  
**Subject:** Follow-up items from OCE weekly 3/19/20

Hi all,

Please see follow-ups from today:

OCE Follow Ups/Forthcoming Items

Ex. 5 Deliberative Process (DP)

OECA IO Follow Ups

Ex. 5 Deliberative Process (DP)

Thanks,  
Sabah

P.S. We apologize for the disruptions today and was not able to fix it during the call. We are testing it to ensure this doesn't happen again.

~~~~~

Sabah Mirza, Special Assistant  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue NW, 3207E WJC South  
Washington, DC 20460  
Office: 202-564-8176

---

**From:** Mirza, Sabah  
**Sent:** Thursday, March 12, 2020 11:18 PM  
**To:** Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>; Buterbaugh, Kristin <Buterbaugh.Kristin@epa.gov>; Pollins, Mark <Pollins.Mark@epa.gov>; Bahk, Benjamin <Bahk.Benjamin@epa.gov>; Cherry, Andrew <Cherry.Andrew@epa.gov>; Cherry, Andrew <Cherry.Andrew@epa.gov>; Belser, Evan <Belser.Evan@epa.gov>; Tozzi, Lauren <Tozzi.Lauren@epa.gov>; Dykes, Teresa <Dykes.Teresa@epa.gov>; Sullivan, Greg <Sullivan.Greg@epa.gov>; Teter, Royan <Teter.Royan@epa.gov>; Saenz, Diana <Saenz.Diana@epa.gov>; Bellot, Michael <Bellot.Michael@epa.gov>  
**Cc:** Bodine, Susan <bodine.susan@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Johnson, Kathleen <Johnson.Kathleen@epa.gov>; Shiffman, Cari <Shiffman.Cari@epa.gov>; Irving, John <Irving.John@epa.gov>; Tran, Victoria <tran.victoria@epa.gov>  
**Subject:** RE: Follow-up items from OCE weekly 3/12/20

Please see updated #3 follow up item for clarification (in red):

Here are the follow-up items from today's OCE meeting:

OCE Follow Ups

# Ex. 5 Deliberative Process (DP)

OECA IO Follow Up

## Ex. 5 Deliberative Process (DP)

Thanks,  
Sabah

~~~~~

Sabah Mirza, Special Assistant  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue NW, 3207E WJC South  
Washington, DC 20460  
Office: 202-564-8176

---

**From:** Mirza, Sabah

**Sent:** Thursday, March 12, 2020 3:21 PM

**To:** Kelley, Rosemarie <[Kelley.Rosemarie@epa.gov](mailto:Kelley.Rosemarie@epa.gov)>; Koslow, Karin <[Koslow.Karin@epa.gov](mailto:Koslow.Karin@epa.gov)>; Buterbaugh, Kristin <[Buterbaugh.Kristin@epa.gov](mailto:Buterbaugh.Kristin@epa.gov)>; Pollins, Mark <[Pollins.Mark@epa.gov](mailto:Pollins.Mark@epa.gov)>; Bahk, Benjamin <[Bahk.Benjamin@epa.gov](mailto:Bahk.Benjamin@epa.gov)>; Cherry, Andrew <[Cherry.Andrew@epa.gov](mailto:Cherry.Andrew@epa.gov)>; Cherry, Andrew <[Cherry.Andrew@epa.gov](mailto:Cherry.Andrew@epa.gov)>; Belser, Evan <[Belser.Evan@epa.gov](mailto:Belser.Evan@epa.gov)>; Tozzi, Lauren <[Tozzi.Lauren@epa.gov](mailto:Tozzi.Lauren@epa.gov)>; Dykes, Teresa <[Dykes.Teresa@epa.gov](mailto:Dykes.Teresa@epa.gov)>; Sullivan, Greg <[Sullivan.Greg@epa.gov](mailto:Sullivan.Greg@epa.gov)>; Teter, Royan <[Teter.Royan@epa.gov](mailto:Teter.Royan@epa.gov)>; Saenz, Diana <[Saenz.Diana@epa.gov](mailto:Saenz.Diana@epa.gov)>; Bellot, Michael <[Bellot.Michael@epa.gov](mailto:Bellot.Michael@epa.gov)>

**Cc:** Bodine, Susan <[bodine.susan@epa.gov](mailto:bodine.susan@epa.gov)>; Starfield, Lawrence <[Starfield.Lawrence@epa.gov](mailto:Starfield.Lawrence@epa.gov)>; Johnson, Kathleen <[Johnson.Kathleen@epa.gov](mailto:Johnson.Kathleen@epa.gov)>; Shiffman, Cari <[Shiffman.Cari@epa.gov](mailto:Shiffman.Cari@epa.gov)>; Irving, John <[Irving.John@epa.gov](mailto:Irving.John@epa.gov)>; Tran, Victoria <[tran.victoria@epa.gov](mailto:tran.victoria@epa.gov)>

**Subject:** Follow-up items from OCE weekly 3/12/20

Hi all,

Here are the follow-up items from today's OCE meeting:

OCE Follow Ups

# Ex. 5 Deliberative Process (DP)

OECA IO Follow Up

## Ex. 5 Deliberative Process (DP)

Thanks,  
Sabah

~~~~~

Sabah Mirza, Special Assistant  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue NW, 3207E WJC South  
Washington, DC 20460  
Office: 202-564-8176

**To:** David P Ross (ross.davidp@epa.gov)[ross.davidp@epa.gov]; Forsgren, Lee[Forsgren.Lee@epa.gov]; Wildeman, Anna[wildeman.anna@epa.gov]; McDonough, Owen[mcdonough.owen@epa.gov]  
**From:** Bodine, Susan[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8C2CC6086FCC44C3BE6B5D32B262D983-BODINE, SUS]  
**Sent:** Thur 3/26/2020 6:36:23 PM (UTC)  
**Subject:** FW: New NY DEC Guidance: COVID-19 - Information for WWTP Operators

FYI

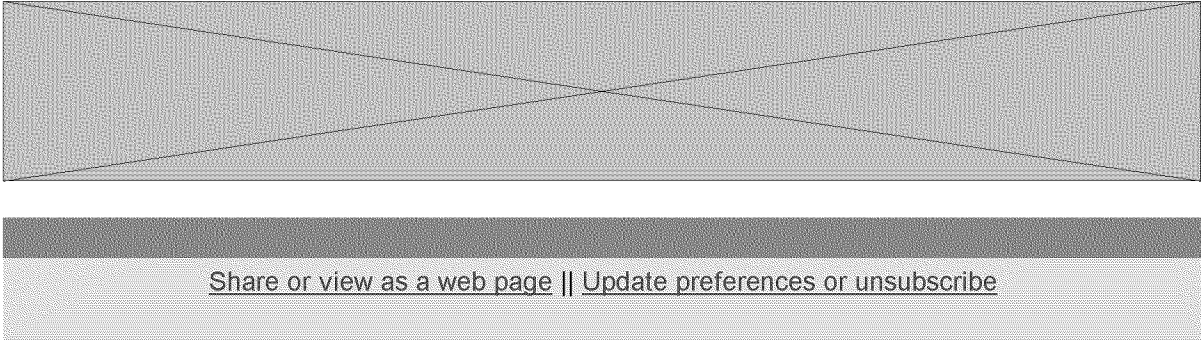
**From:** Hindin, David <Hindin.David@epa.gov>  
**Sent:** Thursday, March 26, 2020 10:13 AM  
**To:** Bodine, Susan <bodine.susan@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>; Irving, John <Irving.John@epa.gov>; Johnson, Kathleen <Johnson.Kathleen@epa.gov>  
**Cc:** Porter, Amy <Porter.Amy@epa.gov>; Pollins, Mark <Pollins.Mark@epa.gov>; Palmer, Daniel <Palmer.Daniel@epa.gov>; Hill, Randy <Hill.Randy@epa.gov>  
**Subject:** New NY DEC Guidance: COVID-19 - Information for WWTP Operators

FYI.

# Ex. 5 Deliberative Process (DP)

TEXT BELOW IS FROM REGION 2 person as part of our NCI SNC work.

NYSDEC put out this helpful guidance. New Jersey DEP is currently writing guidance for the Water and Wastewater Sector. They are putting out a compliance advisory that will address drinking water and wastewater as well as Licensed Operator issues and are considering enforcement discretion in the context of Covid19. NJ welcomes any thoughts we might have.



## COVID-19 - Information for WWTP Operators

COVID-19: Wastewater Treatment Plant Compliance  
DEC is receiving inquiries related to relief from SPDES permit and regulatory compliance. DEC is not authorizing any general waivers of compliance requirements, and will make best efforts to promptly respond to more specific inquiries and individual circumstances.

Permittees and wastewater facility operators need to continue to strive for permit and regulatory compliance.

When issues with compliance are identified, facilities should: (i) document problems, (ii) document efforts to address the problems and/or non-compliance, and (iii) document any additional actions undertaken to maintain facility treatment and achieve compliance. As required under standard protocols, operators should

report non-compliance, the associated circumstances related to non-compliance, and actions to address non-compliance to DEC.

DEC will consider the overall circumstances and extent of non-compliance, and actions by the facility to resolve issues.

#### COVID-19: Wastewater Treatment Plant Operations and Staffing

Wastewater treatment is an essential public health function. COVID-19 may affect operator and worker availability at these facilities – which are critical utilities that are NOT subject to announced workforce reduction requirements.

The qualifications for wastewater treatment plant operators are presented in 6 NYCRR Part 650. The New York State Department of Environmental Conservation's (DEC) guidance on wastewater plant staffing provides appropriate flexibility concerning the need for certified operators to be present in TOGS 1.5.4 "Guidelines for Staffing Wastewater Treatment Plants" and in TOGS 5.1.6 "Wastewater Treatment Plant Operator Certification."

Treatment plant operators are considered essential staff to meet regulatory requirements, protect public health, and provide required monitoring for public transparency. Treatment plant operators should have staffing plans, emergency response plans, and operations and maintenance plans, to guide operation and response in stressed or emergency circumstances.

#### COVID-19: Wastewater Treatment Links for Information on Precautions for Exposure

The New York State Department of Environmental Conservation has received inquiries regarding COVID-19 in wastewater and appropriate precautions for wastewater workers. In short, standard good operational and protective protocols normally employed are recommended to be continued by the leading scientific authorities. You may find useful information and guidance in the following links. Wastewater treatment is considered an essential public health responsibility. As such, workers in wastewater utilities are exempt from workforce reduction requirements. Please feel free to share this information with your municipal supervisors.

#### **CDC - Water Transmission and COVID-19**

<https://www.cdc.gov/coronavirus/2019-ncov/php/water.html>

#### **Coronavirus and Drinking Water and Wastewater**

<https://www.epa.gov/coronavirus/coronavirus-and-drinking-water-and-wastewater>

#### **The Water Professional's Guide to COVID-19**

<https://www.wef.org/news-hub/wef-news/the-water-professionals-guide-to-the-2019-novel-coronavirus/>

#### **WHO - Water, sanitation, hygiene and waste management for COVID-19**

<https://www.who.int/publications-detail/water-sanitation-hygiene-and-waste-management-for-covid-19>

#### **OSHA – Solid Waste and Wastewater Management Workers**

<https://www.osha.gov/SLTC/covid-19/>

#### **Guidance for Reducing Health Risks to Workers Handling Human Waste or**

## Sewage

[https://www.cdc.gov/healthywater/global/sanitation/workers\\_handlingwaste.html](https://www.cdc.gov/healthywater/global/sanitation/workers_handlingwaste.html)

If you have questions related to the WWTP plant operations and staffing, information links, or compliance, you may email the Division of Water, Bureau of Water Compliance at [edward.hampston@dec.ny.gov](mailto:edward.hampston@dec.ny.gov).

If you have specific facility information and questions on compliance for your facility, please contact the Regional Water Engineer in your DEC Region.

Central Office [edward.hampston@dec.ny.gov](mailto:edward.hampston@dec.ny.gov)

Region 1 [anthony.leung@dec.ny.gov](mailto:anthony.leung@dec.ny.gov) or [cathy.haas@dec.ny.gov](mailto:cathy.haas@dec.ny.gov)

Region 2 [selvin.southwell@dec.ny.gov](mailto:selvin.southwell@dec.ny.gov)

Region 3 [manju.cherian@dec.ny.gov](mailto:manju.cherian@dec.ny.gov)

Region 4 [derek.thorsland@dec.ny.gov](mailto:derek.thorsland@dec.ny.gov)

Region 5 [robert.streeter@dec.ny.gov](mailto:robert.streeter@dec.ny.gov)

Region 6 [david.rarick@dec.ny.gov](mailto:david.rarick@dec.ny.gov)

Region 7 [thomas.vigneault@dec.ny.gov](mailto:thomas.vigneault@dec.ny.gov)

Region 8 [tara.blum@dec.ny.gov](mailto:tara.blum@dec.ny.gov)

Region 9 [jeffrey.konsella@dec.ny.gov](mailto:jeffrey.konsella@dec.ny.gov)

The New York State Department of Environmental Conservation respects your right to [privacy](#) and welcomes your [feedback](#) | [Update preferences or unsubscribe](#) | [Learn more about DEC Delivers](#).

Connect with DEC:   

Basil Seggos, Commissioner

This email was sent to [mckenna.douglas@epa.gov](mailto:mckenna.douglas@epa.gov) using GovDelivery Communications Cloud on behalf of: New York State Department of Environmental Conservation · 625 Broadway · Albany, NY 12233 · (518) 402-8013

**From:** Rathbone, Colleen <[Rathbone.Colleen@epa.gov](mailto:Rathbone.Colleen@epa.gov)>

**Sent:** Wednesday, March 18, 2020 9:01 AM

**To:** Ragnauth, Elizabeth <[Ragnauth.Elizabeth@epa.gov](mailto:Ragnauth.Elizabeth@epa.gov)>; Freyre, Dominique <[Freyre.Dominique@epa.gov](mailto:Freyre.Dominique@epa.gov)>; Harsh, Chad <[Harsh.Chad@epa.gov](mailto:Harsh.Chad@epa.gov)>; Palmer, Daniel <[Palmer.Daniel@epa.gov](mailto:Palmer.Daniel@epa.gov)>; Greenwald, Kathryn <[Greenwald.Kathryn@epa.gov](mailto:Greenwald.Kathryn@epa.gov)>; Heminway, Seth <[Heminway.Seth@epa.gov](mailto:Heminway.Seth@epa.gov)>; McAnallen, Rachel <[Mcanallen.Rachel@epa.gov](mailto:Mcanallen.Rachel@epa.gov)>; Modigliani, Justine <[Modigliani.Justine@epa.gov](mailto:Modigliani.Justine@epa.gov)>; Piantanida, David <[Piantanida.David@epa.gov](mailto:Piantanida.David@epa.gov)>; Theis, Joseph <[Theis.Joseph@epa.gov](mailto:Theis.Joseph@epa.gov)>; Wasem, Russell <[Wasem.Russell@epa.gov](mailto:Wasem.Russell@epa.gov)>

**Subject:** RE: NCI Steering Committee - 3 action items (due 3/20)

For what it's worth, here is direction CDPHE is giving its permittees in a larger FAQ:

- **How should dischargers complete their Discharge Monitoring Reports (DMRs) if staff are unable to sample or if they cannot get results back from the laboratory?**

A permittee that temporarily can not collect or analyze samples as required by their permit should still submit the required DMRs, but complete the following steps at the time of DMR submittal:

If your facility submits paper DMRs, please complete the DMR to the best of your ability and write "Pandemic Incident" on the DMR.

If your facility participates in electronic reporting via NetDMR, enter a no data indicator (NODI) code into the required field(s). Options are:

- NODI code "E" (analysis not conducted/ no sample)- this will be the appropriate NODI code in most scenarios. It will trigger NetDMR to flag a "violation." You will need to validate the violation to submit the DMR. Include a cover letter or comment on DMR with an explanation. If appropriate, the division will administratively resolve the violation and it won't be considered as part of your facility's compliance record.
- NODI code "2" (operation shutdown) - this should only be used in extreme situations.

If monitoring is able to be conducted during part, but not all, of the monitoring period, report any collected data on the DMR (or enter in NetDMR) and specifically note the actual frequency that the discharge was monitored. Include a cover letter or comment on the DMR with an explanation.

In some instances, permittees may be constricted to utilizing non-EPA approved methods for sampling and analysis. In this case, report any relevant data on the DMR and include a cover letter or comment that identifies the specific methodology associated with the monitoring.

In all cases, please submit a cover letter with the DMR that includes a brief explanation of how conditions beyond the reasonable control of the permittee resulted in the monitoring and reporting requirements not being met. To the extent feasible, provide any information to support that the facility was being properly maintained at the time and was expected to be meeting effluent limits (e.g., contemporaneous operating logs, or other relevant evidence, that the facility. Also, identify the permittee's plan to complete the monitoring and reporting requirement as soon as possible.

Any monitoring requirements that can not be met by the deadlines in a permit should still be completed at and reported to the division when conditions allow.

**To:** Shiffman, Cari[Shiffman.Cari@epa.gov]  
**From:** Bodine, Susan[O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8C2CC6086FCC44C3BE6B5D32B262D983-BODINE, SUS]  
**Sent:** Thur 3/26/2020 6:18:39 PM (UTC)  
**Subject:** RE: DO NOT USE RE: COVID-19 Implications for EPA's Enforcement and Compliance Assurance Program

Let's just not worry about it.

---

**From:** Shiffman, Cari <Shiffman.Cari@epa.gov>  
**Sent:** Thursday, March 26, 2020 2:18 PM  
**To:** Bodine, Susan <bodine.susan@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Irving, John <Irving.John@epa.gov>  
**Cc:** Mirza, Sabah <Mirza.Sabah@epa.gov>; Tran, Victoria <tran.victoria@epa.gov>; Hull, George <Hull.George@epa.gov>; Norris, Munsel <Norris.Munsel@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Holmes, Carol <Holmes.Carol@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>  
**Subject:** RE: DO NOT USE RE: COVID-19 Implications for EPA's Enforcement and Compliance Assurance Program

Disregard – apparently on the version I just send you can still click on her signature – Sabah and I are calling Munsel now.

Thanks,

Cari Shiffman, Chief of Staff  
U.S. Environmental Protection Agency  
Office of Enforcement and Compliance Assurance  
Office: (202) 564-2898 Ex. 6 Personal Privacy (PP)

---

**From:** Shiffman, Cari <Shiffman.Cari@epa.gov>  
**Sent:** Thursday, March 26, 2020 2:15 PM  
**To:** Bodine, Susan <bodine.susan@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Irving, John <Irving.John@epa.gov>  
**Cc:** Mirza, Sabah <Mirza.Sabah@epa.gov>; Tran, Victoria <tran.victoria@epa.gov>; Hull, George <Hull.George@epa.gov>; Norris, Munsel <Norris.Munsel@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Holmes, Carol <Holmes.Carol@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>  
**Subject:** RE: DO NOT USE RE: COVID-19 Implications for EPA's Enforcement and Compliance Assurance Program

I've already received the version back to me from OGC where you can click on Susan's signature. If you forwarded the one I said not to use, please let others know not to use it.

The corrected version where Susan's signature cannot be clicked on has the word "Memorandum" in the file name.

Thanks,

Cari Shiffman, Chief of Staff  
U.S. Environmental Protection Agency  
Office of Enforcement and Compliance Assurance  
Office: (202) 564-2898 Ex. 6 Personal Privacy (PP)

---

**From:** Shiffman, Cari <Shiffman.Cari@epa.gov>  
**Sent:** Thursday, March 26, 2020 2:00 PM  
**To:** Bodine, Susan <bodine.susan@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Irving, John <Irving.John@epa.gov>  
**Cc:** Mirza, Sabah <Mirza.Sabah@epa.gov>; Tran, Victoria <tran.victoria@epa.gov>; Hull, George <Hull.George@epa.gov>; Norris, Munsel <Norris.Munsel@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Holmes, Carol <Holmes.Carol@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>  
**Subject:** RE: DO NOT USE RE: COVID-19 Implications for EPA's Enforcement and Compliance Assurance Program

Please use this version of the signed memo.



Thanks,

Cari Shiffman, Chief of Staff  
U.S. Environmental Protection Agency  
Office of Enforcement and Compliance Assurance  
Office: (202) 564-2898 | **Ex. 6 Personal Privacy (PP)**

---

**From:** Shiffman, Cari <[Shiffman.Cari@epa.gov](mailto:Shiffman.Cari@epa.gov)>

**Sent:** Thursday, March 26, 2020 1:42 PM

**To:** Bodine, Susan <[bodine.susan@epa.gov](mailto:bodine.susan@epa.gov)>; Starfield, Lawrence <[Starfield.Lawrence@epa.gov](mailto:Starfield.Lawrence@epa.gov)>; Irving, John <[Irving.John@epa.gov](mailto:Irving.John@epa.gov)>

**Cc:** Mirza, Sabah <[Mirza.Sabah@epa.gov](mailto:Mirza.Sabah@epa.gov)>; Tran, Victoria <[tran.victoria@epa.gov](mailto:tran.victoria@epa.gov)>; Hull, George <[Hull.George@epa.gov](mailto:Hull.George@epa.gov)>; Norris, Munsel <[Norris.Munsel@epa.gov](mailto:Norris.Munsel@epa.gov)>; Fogarty, Johnpc <[Fogarty.Johnpc@epa.gov](mailto:Fogarty.Johnpc@epa.gov)>; Holmes, Carol <[Holmes.Carol@epa.gov](mailto:Holmes.Carol@epa.gov)>; Koslow, Karin <[Koslow.Karin@epa.gov](mailto:Koslow.Karin@epa.gov)>; Kelley, Rosemarie <[Kelley.Rosemarie@epa.gov](mailto:Kelley.Rosemarie@epa.gov)>

**Subject:** DO NOT USE RE: COVID-19 Implications for EPA's Enforcement and Compliance Assurance Program

I need to lock down the document more to make it more secure.

Thanks,

Cari Shiffman, Chief of Staff  
U.S. Environmental Protection Agency  
Office of Enforcement and Compliance Assurance  
Office: (202) 564-2898 | **Ex. 6 Personal Privacy (PP)**

---

**From:** Shiffman, Cari <[Shiffman.Cari@epa.gov](mailto:Shiffman.Cari@epa.gov)>

**Sent:** Thursday, March 26, 2020 1:35 PM

**To:** Bodine, Susan <[bodine.susan@epa.gov](mailto:bodine.susan@epa.gov)>; Starfield, Lawrence <[Starfield.Lawrence@epa.gov](mailto:Starfield.Lawrence@epa.gov)>; Irving, John <[Irving.John@epa.gov](mailto:Irving.John@epa.gov)>

**Cc:** Mirza, Sabah <[Mirza.Sabah@epa.gov](mailto:Mirza.Sabah@epa.gov)>; Tran, Victoria <[tran.victoria@epa.gov](mailto:tran.victoria@epa.gov)>; Hull, George <[Hull.George@epa.gov](mailto:Hull.George@epa.gov)>; Norris, Munsel <[Norris.Munsel@epa.gov](mailto:Norris.Munsel@epa.gov)>; Fogarty, Johnpc <[Fogarty.Johnpc@epa.gov](mailto:Fogarty.Johnpc@epa.gov)>; Holmes, Carol <[Holmes.Carol@epa.gov](mailto:Holmes.Carol@epa.gov)>; Koslow, Karin <[Koslow.Karin@epa.gov](mailto:Koslow.Karin@epa.gov)>; Kelley, Rosemarie <[Kelley.Rosemarie@epa.gov](mailto:Kelley.Rosemarie@epa.gov)>

**Subject:** COVID-19 Implications for EPA's Enforcement and Compliance Assurance Program

Please find the signed memorandum on *COVID-19 Implications for EPA's Enforcement and Compliance Assurance Program*.

Thanks,

Cari Shiffman, Chief of Staff  
U.S. Environmental Protection Agency  
Office of Enforcement and Compliance Assurance  
Office: (202) 564-2898 | **Ex. 6 Personal Privacy (PP)**

**To:** Shiffman, Cari[Shiffman.Cari@epa.gov]  
**Cc:** Starfield, Lawrence[Starfield.Lawrence@epa.gov]; Irving, John[Irving.John@epa.gov]; Mirza, Sabah[Mirza.Sabah@epa.gov]; Tran, Victoria[tran.victoria@epa.gov]  
**From:** Bodine, Susan[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8C2CC6086FCC44C3BE6B5D32B262D983-BODINE, SUS]  
**Sent:** Tue 3/24/2020 5:33:11 PM (UTC)  
**Subject:** FW: COVID-19 State of Emergency Declaration – Landfill regulatory flexibility  
[NWRA - EPA - COVID-19 regulatory flexibility.pdf](#)

Do we need to put this and others like it in CMS and acknowledge? Our broader memo is our substantive response.

---

**From:** Anne Germain <agermain@wasterecycling.org>  
**Sent:** Monday, March 23, 2020 4:36 PM  
**To:** Bodine, Susan <bodine.susan@epa.gov>  
**Cc:** Wheeler, Andrew <wheeler.andrew@epa.gov>; Idsal, Anne <idsal.anne@epa.gov>; Gunasekara, Mandy <gunasekara.Mandy@epa.gov>  
**Subject:** COVID-19 State of Emergency Declaration – Landfill regulatory flexibility

Dear Ms. Bodine –

Please find NWRA’s request for regulatory flexibility with respect to rules governing landfills.

Should you have any questions, please feel free to reach out.

Best,  
Anne.

Anne M. Germain, P.E., BCEE  
COO & SVP Regulatory Affairs  
National Waste & Recycling Association  
202-364-3724

**To:** Irving, John[Irving.John@epa.gov]  
**From:** Bodine, Susan[O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8C2CC6086FCC44C3BE6B5D32B262D983-BODINE, SUS]  
**Sent:** Wed 3/25/2020 5:00:11 PM (UTC)  
**Subject:** FW: State Questions

**From:** Bodine, Susan  
**Sent:** Wednesday, March 25, 2020 10:00 AM  
**To:** Benevento, Douglas <benevento.douglas@epa.gov>  
**Subject:** RE: State Questions

Some of these are program issues. We don't control grant requirements.

The highlighted issues are enforcement discretion and are addressed in the memo.

**From:** Benevento, Douglas <benevento.douglas@epa.gov>  
**Sent:** Wednesday, March 25, 2020 9:30 AM  
**To:** Bodine, Susan <bodine.susan@epa.gov>  
**Subject:** FW: State Questions

Hey Susan, I hope you're well.

Many of these questions will be answered by the document you are currently drafting, but I wanted to send it to you to see if there is anything new that would inform your work. I do have a question about I/M programs, I had not thought of that and don't know if they are addressed. Of course suspension of an I/M program would generally be a SIP violation, is that covered? In any event I will give you a call to discuss. Thanks Susan.

**From:** Richardson, RobinH <Richardson.RobinH@epa.gov>  
**Sent:** Tuesday, March 24, 2020 5:39 PM  
**To:** Benevento, Douglas <benevento.douglas@epa.gov>  
**Cc:** Carter, Brittany S. <carter.brittanys@epa.gov>; Bowles, Jack <Bowles.Jack@epa.gov>; Saddler, Melissa <Saddler.Melissa@epa.gov>; Barbery, Andrea <Barbery.Andrea@epa.gov>; Garvey, Megan <garvey.megan@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>; Coxen, Carrie <coxen.carrie@epa.gov>  
**Subject:** State Questions

Hi Doug –

I hope you and your family are well. We wanted to flag for you that we're starting to receive a multitude of questions from the states that run the spectrum. Examples are below from ECOS and R4 States. We are working on an approach with the regions, program offices and OPA on collecting the questions, developing responses, and responding to ensure consistency. We have time with you tomorrow either during our morning Deputy Morning Briefing and/or OCIR Monthly that we hope to get your thoughts on our proposed next steps. Please let us know if you need anything more before we meet.

Thank you! Robin

Example State Questions:  
ECOS Questions:

# Ex. 5 Deliberative Process (DP)

Region 4 States:

## Ex. 5 Deliberative Process (DP)

# Ex. 5 Deliberative Process (DP)

-----  
Robin H Richardson  
Deputy Associate Administrator  
Office of Congressional and Intergovernmental Relations  
U.S. Environmental Protection Agency  
202-564-3358 (desk)  
Ex. 5 Deliberative Process (DP) (cell)  
[richardson.robinh@epa.gov](mailto:richardson.robinh@epa.gov)



**To:** Irving, John[Irving.John@epa.gov]  
**From:** Bodine, Susan[O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8C2CC6086FCC44C3BE6B5D32B262D983-BODINE, SUS]  
**Sent:** Wed 3/25/2020 4:59:52 PM (UTC)  
**Subject:** FW: ECOS Office Call Wednesday at 9:30am -- summary

**From:** Hindin, David <Hindin.David@epa.gov>  
**Sent:** Wednesday, March 25, 2020 10:29 AM  
**To:** Bodine, Susan <bodine.susan@epa.gov>  
**Subject:** RE: ECOS Office Call Wednesday at 9:30am -- summary

Ex. 5 Deliberative Process (DP)

**From:** Bodine, Susan <bodine.susan@epa.gov>  
**Sent:** Wednesday, March 25, 2020 10:27 AM  
**To:** Hindin, David <Hindin.David@epa.gov>  
**Subject:** RE: ECOS Office Call Wednesday at 9:30am -- summary

Ex. 5 Deliberative Process (DP)

**From:** Hindin, David <Hindin.David@epa.gov>  
**Sent:** Wednesday, March 25, 2020 10:12 AM  
**To:** Bodine, Susan <bodine.susan@epa.gov>  
**Cc:** Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>; Johnson, Kathleen <Johnson.Kathleen@epa.gov>  
**Subject:** RE: ECOS Office Call Wednesday at 9:30am -- summary

I just spoke with ECOS Exec Board members and Exec Director, here are take-aways:

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

**From:** Hindin, David

**Sent:** Tuesday, March 24, 2020 8:52 PM

**To:** Bodine, Susan <[bodine.susan@epa.gov](mailto:bodine.susan@epa.gov)>

**Cc:** Kelley, Rosemarie <[Kelley.Rosemarie@epa.gov](mailto:Kelley.Rosemarie@epa.gov)>; Starfield, Lawrence <[Starfield.Lawrence@epa.gov](mailto:Starfield.Lawrence@epa.gov)>; Koslow, Karin <[Koslow.Karin@epa.gov](mailto:Koslow.Karin@epa.gov)>; Johnson, Kathleen <[Johnson.Kathleen@epa.gov](mailto:Johnson.Kathleen@epa.gov)>

**Subject:** ECOS Office Call Wednesday at 9:30am -- I have been invited to provide information on or inspection guidance and upcoming enforcement discretion

Susan:

Jim Macy invited me to give the ECOS Exec Board an update at 9:30am Wednesday. I am sure he would be happy to have you do it, but might be easier for me to do it since I am the communicator and not the decision maker. I will not plan to distribute any documents. I will describe the two documents in broad terms and indicate that ECOS Exec Board opportunity to review quickly could start by Noonish Wednesday, and that we are only looking for ECOS Exec Board input and not wider distribution.

Let me know your thoughts. And if Rosemarie wants to join as well that is good.

*David A. Hindin*

Director, Office of Compliance

Office of Enforcement and Compliance Assurance

U.S. Environmental Protection Agency, Washington, DC 20460

Phone Ex. 6 Personal Privacy (PP) mobile only until April 3, 20202

Appointment

---

**From:** Bodine, Susan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8C2CC6086FCC44C3BE6B5D32B262D983-BODINE, SUS]  
**Sent:** 3/20/2020 3:22:41 PM  
**To:** Gunasekara, Mandy [gunasekara.Mandy@epa.gov]

**Subject:** Call Re: Covid-19 and Request for Flexibility

**Location:** Call-in Number: Ex. 6 Personal Privacy (PP)

**Start:** 3/20/2020 7:30:00 PM

**End:** 3/20/2020 8:15:00 PM

**Show Time As:** Tentative

**To:** Hull, George[Hull.George@epa.gov]; Egan, Patrick[egan.patrick@epa.gov]  
**Cc:** Starfield, Lawrence[Starfield.Lawrence@epa.gov]; Irving, John[Irving.John@epa.gov]; Shiffman, Cari[Shiffman.Cari@epa.gov]; Mirza, Sabah[Mirza.Sabah@epa.gov]; Tran, Victoria[tran.victoria@epa.gov]; OECA Office Directors and Deputy Directors[OECA\_Office\_Directors\_and\_Deputy\_Directors@epa.gov]  
**From:** Bodine, Susan[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8C2CC6086FCC44C3BE6B5D32B262D983-BODINE, SUS]  
**Sent:** Wed 3/25/2020 7:08:19 PM (UTC)  
**Subject:** Enforcement discretion memo  
[COVID19 Policy final draft.docx](#)

Sent this on for WH/OPA review. It is NOT final.

But, we need to get ready for release. We need to decide a website. And I think we need a press release.

Susan



Appointment

---

**From:** Bodine, Susan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8C2CC6086FCC44C3BE6B5D32B262D983-BODINE, SUS]  
**Sent:** 3/19/2020 4:12:42 PM  
**CC:** Dunlap, David [dunlap.david@epa.gov]; McIntosh, Chad [mcintosh.chad@epa.gov]

**Subject:** Call Re: Covid-19 and Request for Flexibility

**Location:** Call-in Number: **Ex. 6 Personal Privacy (PP)**

**Start:** 3/20/2020 7:30:00 PM

**End:** 3/20/2020 8:15:00 PM

**Show Time As:** Tentative

**Ex. 6 Administrator's Email**

**To:** [REDACTED]  
**From:** Bodine, Susan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8C2CC6086FCC44C3BE6B5D32B262D983-BODINE, SUS]  
**Sent:** Tue 3/24/2020 12:20:44 AM (UTC)  
**Subject:** FW: time with the Administrator  
[COVID19 message 03 24 20.docx](#)

---

**From:** Bodine, Susan  
**Sent:** Monday, March 23, 2020 8:19 PM  
**To:** Hyman, Alana <Hyman.Alana@epa.gov>  
**Subject:** RE: time with the Administrator

Five pages. Attached. There may be further revisions but this is close to final.

---

**From:** Hyman, Alana <Hyman.Alana@epa.gov>  
**Sent:** Monday, March 23, 2020 8:00 PM  
**To:** Bodine, Susan <bodine.susan@epa.gov>  
**Subject:** RE: time with the Administrator

Are the documents long? We can send them over this evening.

---

**From:** Bodine, Susan <bodine.susan@epa.gov>  
**Sent:** Monday, March 23, 2020 7:58 PM  
**To:** Hyman, Alana <Hyman.Alana@epa.gov>  
**Subject:** Re: time with the Administrator

but he does not have the document yet. Can send now but can we move this to the PM to give him time to read?

Sent from my iPad

On Mar 23, 2020, at 7:56 PM, Bodine, Susan <bodine.susan@epa.gov> wrote:

Thanks 45 min and your title is perfect.

Sent from my iPad

On Mar 23, 2020, at 7:41 PM, Hyman, Alana <Hyman.Alana@epa.gov> wrote:

How much time do you need and what would you like me to label the briefing as?

Sent from my iPhone

On Mar 23, 2020, at 6:13 PM, Bodine, Susan <bodine.susan@epa.gov> wrote:

Can I get time on his schedule tomorrow afternoon to discuss COVID-19 and enforcement discretion? We have a document that is still under review and I plan to send over in the morning. You should invite:

Leopold, Matt (OGC) <Leopold.Matt@epa.gov>; Idsal, Anne <idsal.anne@epa.gov>;  
Wright, Peter <wright.peter@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>;  
Benevento, Douglas <benevento.douglas@epa.gov>; Dunn, Alexandra  
<dunn.alexandra@epa.gov>; McIntosh, Chad <mcintosh.chad@epa.gov>; Ross, David P  
<ross.davidp@epa.gov>; Gunasekara, Mandy <gunasekara.Mandy@epa.gov>; Sopkin,

Gregory <[sopkin.gregory@epa.gov](mailto:sopkin.gregory@epa.gov)>; Dunlap, David <[dunlap.david@epa.gov](mailto:dunlap.david@epa.gov)>; Irving, John <[Irving.John@epa.gov](mailto:Irving.John@epa.gov)>; Doyle, Brett <[doyle.brett@epa.gov](mailto:doyle.brett@epa.gov)>; Brazauskas, Joseph <[brazauskas.joseph@epa.gov](mailto:brazauskas.joseph@epa.gov)>; Molina, Michael [molina.michael@epa.gov](mailto:molina.michael@epa.gov); and Corry.

**To:** Shiffman, Cari[Shiffman.Cari@epa.gov]; Starfield, Lawrence[Starfield.Lawrence@epa.gov]; Irving, John[Irving.John@epa.gov]  
**Cc:** Mirza, Sabah[Mirza.Sabah@epa.gov]; Tran, Victoria[tran.victoria@epa.gov]; Hull, George[Hull.George@epa.gov]; Norris, Munsel[Norris.Munsel@epa.gov]; Fogarty, Johnpc[Fogarty.Johnpc@epa.gov]; Holmes, Carol[Holmes.Carol@epa.gov]; Koslow, Karin[Koslow.Karin@epa.gov]; Kelley, Rosemarie[Kelley.Rosemarie@epa.gov]  
**From:** Bodine, Susan[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8C2CC6086FCC44C3BE6B5D32B262D983-BODINE, SUS]  
**Sent:** Thur 3/26/2020 7:44:44 PM (UTC)  
**Subject:** RE: DO NOT USE RE: COVID-19 Implications for EPA's Enforcement and Compliance Assurance Program

Let me know when the release goes out.

---

**From:** Shiffman, Cari <Shiffman.Cari@epa.gov>  
**Sent:** Thursday, March 26, 2020 3:19 PM  
**To:** Bodine, Susan <bodine.susan@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Irving, John <Irving.John@epa.gov>  
**Cc:** Mirza, Sabah <Mirza.Sabah@epa.gov>; Tran, Victoria <tran.victoria@epa.gov>; Hull, George <Hull.George@epa.gov>; Norris, Munsel <Norris.Munsel@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Holmes, Carol <Holmes.Carol@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>  
**Subject:** RE: DO NOT USE RE: COVID-19 Implications for EPA's Enforcement and Compliance Assurance Program

Okay please proceed. It's fine.

Thanks,  
  
Cari Shiffman, Chief of Staff  
U.S. Environmental Protection Agency  
Office of Enforcement and Compliance Assurance  
Office: (202) 564-2898 | Ex. 6 Personal Privacy (PP)

---

**From:** Shiffman, Cari <Shiffman.Cari@epa.gov>  
**Sent:** Thursday, March 26, 2020 3:07 PM  
**To:** Bodine, Susan <bodine.susan@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Irving, John <Irving.John@epa.gov>  
**Cc:** Mirza, Sabah <Mirza.Sabah@epa.gov>; Tran, Victoria <tran.victoria@epa.gov>; Hull, George <Hull.George@epa.gov>; Norris, Munsel <Norris.Munsel@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Holmes, Carol <Holmes.Carol@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>  
**Subject:** RE: DO NOT USE RE: COVID-19 Implications for EPA's Enforcement and Compliance Assurance Program

Sorry another hold. Please do NOT post. Please tell everyone to stop circulating the memo.

Thanks,  
  
Cari Shiffman, Chief of Staff  
U.S. Environmental Protection Agency  
Office of Enforcement and Compliance Assurance  
Office: (202) 564-2898 | Ex. 6 Personal Privacy (PP)

---

**From:** Shiffman, Cari <Shiffman.Cari@epa.gov>  
**Sent:** Thursday, March 26, 2020 2:27 PM  
**To:** Bodine, Susan <bodine.susan@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Irving, John <Irving.John@epa.gov>  
**Cc:** Mirza, Sabah <Mirza.Sabah@epa.gov>; Tran, Victoria <tran.victoria@epa.gov>; Hull, George <Hull.George@epa.gov>; Norris, Munsel <Norris.Munsel@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Holmes, Carol <Holmes.Carol@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>  
**Subject:** RE: DO NOT USE RE: COVID-19 Implications for EPA's Enforcement and Compliance Assurance Program

Okay – we discussed. Munsel, please proceed.

Thanks,

Cari Shiffman, Chief of Staff  
U.S. Environmental Protection Agency  
Office of Enforcement and Compliance Assurance  
Office: (202) 564-2898 | Ex. 6 Personal Privacy (PP)

---

**From:** Shiffman, Cari <[Shiffman.Cari@epa.gov](mailto:Shiffman.Cari@epa.gov)>

**Sent:** Thursday, March 26, 2020 2:18 PM

**To:** Bodine, Susan <[bodine.susan@epa.gov](mailto:bodine.susan@epa.gov)>; Starfield, Lawrence <[Starfield.Lawrence@epa.gov](mailto:Starfield.Lawrence@epa.gov)>; Irving, John <[Irving.John@epa.gov](mailto:Irving.John@epa.gov)>

**Cc:** Mirza, Sabah <[Mirza.Sabah@epa.gov](mailto:Mirza.Sabah@epa.gov)>; Tran, Victoria <[tran.victoria@epa.gov](mailto:tran.victoria@epa.gov)>; Hull, George <[Hull.George@epa.gov](mailto:Hull.George@epa.gov)>; Norris, Munsel <[Norris.Munsel@epa.gov](mailto:Norris.Munsel@epa.gov)>; Fogarty, Johnpc <[Fogarty.Johnpc@epa.gov](mailto:Fogarty.Johnpc@epa.gov)>; Holmes, Carol <[Holmes.Carol@epa.gov](mailto:Holmes.Carol@epa.gov)>; Koslow, Karin <[Koslow.Karin@epa.gov](mailto:Koslow.Karin@epa.gov)>; Kelley, Rosemarie <[Kelley.Rosemarie@epa.gov](mailto:Kelley.Rosemarie@epa.gov)>

**Subject:** RE: DO NOT USE RE: COVID-19 Implications for EPA's Enforcement and Compliance Assurance Program

Disregard – apparently on the version I just send you can still click on her signature – Sabah and I are calling Munsel now.

Thanks,

Cari Shiffman, Chief of Staff  
U.S. Environmental Protection Agency  
Office of Enforcement and Compliance Assurance  
Office: (202) 564-2898 | Ex. 6 Personal Privacy (PP)

---

**From:** Shiffman, Cari <[Shiffman.Cari@epa.gov](mailto:Shiffman.Cari@epa.gov)>

**Sent:** Thursday, March 26, 2020 2:15 PM

**To:** Bodine, Susan <[bodine.susan@epa.gov](mailto:bodine.susan@epa.gov)>; Starfield, Lawrence <[Starfield.Lawrence@epa.gov](mailto:Starfield.Lawrence@epa.gov)>; Irving, John <[Irving.John@epa.gov](mailto:Irving.John@epa.gov)>

**Cc:** Mirza, Sabah <[Mirza.Sabah@epa.gov](mailto:Mirza.Sabah@epa.gov)>; Tran, Victoria <[tran.victoria@epa.gov](mailto:tran.victoria@epa.gov)>; Hull, George <[Hull.George@epa.gov](mailto:Hull.George@epa.gov)>; Norris, Munsel <[Norris.Munsel@epa.gov](mailto:Norris.Munsel@epa.gov)>; Fogarty, Johnpc <[Fogarty.Johnpc@epa.gov](mailto:Fogarty.Johnpc@epa.gov)>; Holmes, Carol <[Holmes.Carol@epa.gov](mailto:Holmes.Carol@epa.gov)>; Koslow, Karin <[Koslow.Karin@epa.gov](mailto:Koslow.Karin@epa.gov)>; Kelley, Rosemarie <[Kelley.Rosemarie@epa.gov](mailto:Kelley.Rosemarie@epa.gov)>

**Subject:** RE: DO NOT USE RE: COVID-19 Implications for EPA's Enforcement and Compliance Assurance Program

I've already received the version back to me from OGC where you can click on Susan's signature. If you forwarded the one I said not to use, please let others know not to use it.

The corrected version where Susan's signature cannot be clicked on has the word "Memorandum" in the file name.

Thanks,

Cari Shiffman, Chief of Staff  
U.S. Environmental Protection Agency  
Office of Enforcement and Compliance Assurance  
Office: (202) 564-2898 | Ex. 6 Personal Privacy (PP)

---

**From:** Shiffman, Cari <[Shiffman.Cari@epa.gov](mailto:Shiffman.Cari@epa.gov)>

**Sent:** Thursday, March 26, 2020 2:00 PM

**To:** Bodine, Susan <[bodine.susan@epa.gov](mailto:bodine.susan@epa.gov)>; Starfield, Lawrence <[Starfield.Lawrence@epa.gov](mailto:Starfield.Lawrence@epa.gov)>; Irving, John <[Irving.John@epa.gov](mailto:Irving.John@epa.gov)>

**Cc:** Mirza, Sabah <[Mirza.Sabah@epa.gov](mailto:Mirza.Sabah@epa.gov)>; Tran, Victoria <[tran.victoria@epa.gov](mailto:tran.victoria@epa.gov)>; Hull, George <[Hull.George@epa.gov](mailto:Hull.George@epa.gov)>; Norris, Munsel <[Norris.Munsel@epa.gov](mailto:Norris.Munsel@epa.gov)>; Fogarty, Johnpc <[Fogarty.Johnpc@epa.gov](mailto:Fogarty.Johnpc@epa.gov)>; Holmes, Carol <[Holmes.Carol@epa.gov](mailto:Holmes.Carol@epa.gov)>; Koslow, Karin <[Koslow.Karin@epa.gov](mailto:Koslow.Karin@epa.gov)>; Kelley, Rosemarie <[Kelley.Rosemarie@epa.gov](mailto:Kelley.Rosemarie@epa.gov)>

**Subject:** RE: DO NOT USE RE: COVID-19 Implications for EPA's Enforcement and Compliance Assurance Program

Please use this version of the signed memo.

Thanks,

ED\_004611\_00006879-00002

OECA COVID-19 2020  
FOIAs\_Production002

Cari Shiffman, Chief of Staff  
U.S. Environmental Protection Agency  
Office of Enforcement and Compliance Assurance  
Office: (202) 564-2898 | Ex. 6 Personal Privacy (PP)

---

**From:** Shiffman, Cari <[Shiffman.Cari@epa.gov](mailto:Shiffman.Cari@epa.gov)>

**Sent:** Thursday, March 26, 2020 1:42 PM

**To:** Bodine, Susan <[bodine.susan@epa.gov](mailto:bodine.susan@epa.gov)>; Starfield, Lawrence <[Starfield.Lawrence@epa.gov](mailto:Starfield.Lawrence@epa.gov)>; Irving, John <[Irving.John@epa.gov](mailto:Irving.John@epa.gov)>

**Cc:** Mirza, Sabah <[Mirza.Sabah@epa.gov](mailto:Mirza.Sabah@epa.gov)>; Tran, Victoria <[tran.victoria@epa.gov](mailto:tran.victoria@epa.gov)>; Hull, George <[Hull.George@epa.gov](mailto:Hull.George@epa.gov)>; Norris, Munsel <[Norris.Munsel@epa.gov](mailto:Norris.Munsel@epa.gov)>; Fogarty, Johnpc <[Fogarty.Johnpc@epa.gov](mailto:Fogarty.Johnpc@epa.gov)>; Holmes, Carol <[Holmes.Carol@epa.gov](mailto:Holmes.Carol@epa.gov)>; Koslow, Karin <[Koslow.Karin@epa.gov](mailto:Koslow.Karin@epa.gov)>; Kelley, Rosemarie <[Kelley.Rosemarie@epa.gov](mailto:Kelley.Rosemarie@epa.gov)>

**Subject:** DO NOT USE RE: COVID-19 Implications for EPA's Enforcement and Compliance Assurance Program

I need to lock down the document more to make it more secure.

Thanks,

Cari Shiffman, Chief of Staff  
U.S. Environmental Protection Agency  
Office of Enforcement and Compliance Assurance  
Office: (202) 564-2898 | Ex. 6 Personal Privacy (PP)

---

**From:** Shiffman, Cari <[Shiffman.Cari@epa.gov](mailto:Shiffman.Cari@epa.gov)>

**Sent:** Thursday, March 26, 2020 1:35 PM

**To:** Bodine, Susan <[bodine.susan@epa.gov](mailto:bodine.susan@epa.gov)>; Starfield, Lawrence <[Starfield.Lawrence@epa.gov](mailto:Starfield.Lawrence@epa.gov)>; Irving, John <[Irving.John@epa.gov](mailto:Irving.John@epa.gov)>

**Cc:** Mirza, Sabah <[Mirza.Sabah@epa.gov](mailto:Mirza.Sabah@epa.gov)>; Tran, Victoria <[tran.victoria@epa.gov](mailto:tran.victoria@epa.gov)>; Hull, George <[Hull.George@epa.gov](mailto:Hull.George@epa.gov)>; Norris, Munsel <[Norris.Munsel@epa.gov](mailto:Norris.Munsel@epa.gov)>; Fogarty, Johnpc <[Fogarty.Johnpc@epa.gov](mailto:Fogarty.Johnpc@epa.gov)>; Holmes, Carol <[Holmes.Carol@epa.gov](mailto:Holmes.Carol@epa.gov)>; Koslow, Karin <[Koslow.Karin@epa.gov](mailto:Koslow.Karin@epa.gov)>; Kelley, Rosemarie <[Kelley.Rosemarie@epa.gov](mailto:Kelley.Rosemarie@epa.gov)>

**Subject:** COVID-19 Implications for EPA's Enforcement and Compliance Assurance Program

Please find the signed memorandum on *COVID-19 Implications for EPA's Enforcement and Compliance Assurance Program*.

Thanks,

Cari Shiffman, Chief of Staff  
U.S. Environmental Protection Agency  
Office of Enforcement and Compliance Assurance  
Office: (202) 564-2898 | Ex. 6 Personal Privacy (PP)

**Cc:** Kelley, Rosemarie[Kelley.Rosemarie@epa.gov]; Starfield, Lawrence[Starfield.Lawrence@epa.gov]; Irving, John[Irving.John@epa.gov]; Shiffman, Cari[Shiffman.Cari@epa.gov]; Mirza, Sabah[Mirza.Sabah@epa.gov]; Tran, Victoria[tran.victoria@epa.gov]  
**To:** Brooks, Phillip[Brooks.Phillip@epa.gov]; Miller, Anthony[Miller.Anthony@epa.gov]  
**From:** Bodine, Susan[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8C2CC6086FCC44C3BE6B5D32B262D983-BODINE, SUS]  
**Sent:** Tue 3/24/2020 11:15:01 PM (UTC)  
**Subject:** Fwd: Fuel Waiver Request  
[COVID RVP Fuel Waiver Request 03 24 2020.pdf](#)  
[ATT00001.htm](#)

AFPM

Sent from my iPad

Begin forwarded message:

**From:** AFPM President <AFPM\_President@afpm.org>  
**Date:** March 24, 2020 at 6:53:17 PM EDT  
**To:** "Gunasekara, Mandy" <gunasekara.Mandy@epa.gov>, "Bodine, Susan" <bodine.susan@epa.gov>  
**Cc:** "James.colgary@hq.doe.gov" <James.colgary@hq.doe.gov>  
**Subject:** Fuel Waiver Request

Dear Administrator Wheeler and Assistant Administrator Bodine,

Attached, please find the letter from Chet Thompson, President and CEO, American Fuel & Petrochemical Manufacturers, regarding the request for conventional gasoline RVP/RFG volatility waivers.

Please contact us with any questions.

Best regards,  
Rebbie Riley on behalf of Chet Thompson

Rebbie J. Riley  
Executive Assistant

American  
Fuel & Petrochemical  
Manufacturers  
1800 M Street NW  
Suite 900 North  
Washington, DC 20036  
202.457.0480 office  
202.844.5465 direct  
202.457.0486 fax

[rriley@afpm.org](mailto:rriley@afpm.org)  
Learn more about AFPM at [afpm.org](http://afpm.org).

**CONFIDENTIALITY NOTICE:** This electronic message contains information from the American Fuel & Petrochemical Manufacturers that may be confidential or privileged. The information is intended solely for the use of the individual(s) or entity(ies) named above. If you are not the intended recipient, be aware that any disclosure, copying, distribution, or use of the contents of this message is prohibited. If you have received this e-mail in error, please notify us immediately by telephone at (202) 457-0480 or by reply e-mail and permanently delete this e-mail, any attachments, and all copies thereof.

**To:** Shiffman, Cari[Shiffman.Cari@epa.gov]; Starfield, Lawrence[Starfield.Lawrence@epa.gov]; Irving, John[Irving.John@epa.gov]; Hull, George[Hull.George@epa.gov]; Egan, Patrick[egan.patrick@epa.gov]  
**From:** Bodine, Susan[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8C2CC6086FCC44C3BE6B5D32B262D983-BODINE, SUS]  
**Sent:** Thur 3/26/2020 5:02:41 PM (UTC)  
**Subject:** Cleared  
COVID-19 Implications for EPA's Enforcement and Compliance Assurance Program (Unsigned).docx

This is cleared and ready for signature.



**To:** Shiffman, Cari[Shiffman.Cari@epa.gov]  
**From:** Bodine, Susan[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8C2CC6086FCC44C3BE6B5D32B262D983-BODINE, SUS]  
**Sent:** Wed 3/25/2020 7:55:52 PM (UTC)  
**Subject:** FW: Enforcement discretion memo  
[COVID19 Policy final draft.docx](#)

Can you scrub this?

---

**From:** Bodine, Susan  
**Sent:** Wednesday, March 25, 2020 3:08 PM  
**To:** Hull, George <Hull.George@epa.gov>; Egan, Patrick <egan.patrick@epa.gov>  
**Cc:** Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Irving, John <Irving.John@epa.gov>; Shiffman, Cari <Shiffman.Cari@epa.gov>; Mirza, Sabah <Mirza.Sabah@epa.gov>; Tran, Victoria <tran.victoria@epa.gov>; OECA Office Directors and Deputy Directors <OECA\_Office\_Directors\_and\_Deputy\_Directors@epa.gov>  
**Subject:** Enforcement discretion memo

Sent this on for WH/OPA review. It is NOT final.

But, we need to get ready for release. We need to decide a website. And I think we need a press release.

Susan

Appointment

---

**From:** Bodine, Susan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8C2CC6086FCC44C3BE6B5D32B262D983-BODINE, SUS]  
**Sent:** 3/23/2020 11:56:32 PM  
**To:** Ex. 6 Personal Privacy (PP)  
**Subject:** Accepted: Briefing: COVID-19 and Enforcement Discretion  
**Location:** Administrator's Office/ Conference Call: Ex. 6 Personal Privacy (PP) dial-in: Ex. 6 Personal Privacy (PP)  
**Start:** 3/24/2020 3:00:00 PM  
**End:** 3/24/2020 3:45:00 PM  
  
**Recurrence:** (none)

Appointment

---

**From:** Bodine, Susan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8C2CC6086FCC44C3BE6B5D32B262D983-BODINE, SUS]  
**Sent:** 3/19/2020 5:16:23 PM  
**To:** Irving, John [Irving.John@epa.gov]

**Subject:** Call Re: Covid-19 and Request for Flexibility

**Location:** Call-in Number: **Ex. 6 Personal Privacy (PP)**

**Start:** 3/20/2020 7:30:00 PM

**End:** 3/20/2020 8:15:00 PM

**Show Time As:** Tentative

**To:** Leopold, Matt (OGC)[Leopold.Matt@epa.gov]; Idsal, Anne[idsal.anne@epa.gov]  
**Cc:** Dunn, Alexandra[dunn.alexandra@epa.gov]; Bolen, Brittany[bolen.brittany@epa.gov]  
**From:** Bodine, Susan[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8C2CC6086FCC44C3BE6B5D32B262D983-BODINE, SUS]  
**Sent:** Thur 3/19/2020 1:45:42 PM (UTC)  
**Subject:** RE: Cement Industry Concerns for Coronavirus Pandemic

No general external communication to date. Just individual case by case discussions with regulated entities and their lawyers.

---

**From:** Leopold, Matt (OGC) <Leopold.Matt@epa.gov>  
**Sent:** Thursday, March 19, 2020 9:44 AM  
**To:** Idsal, Anne <idsal.anne@epa.gov>  
**Cc:** Dunn, Alexandra <dunn.alexandra@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>  
**Subject:** Re: Cement Industry Concerns for Coronavirus Pandemic

I've gotten inquiries as well.

Susan, has OECA sent out any guidance more broadly on inspections during this time? Are there plans to do so? I saw your internal communication, and I thought it was good. I look forward to discussing on the call.

Sent from my iPad

On Mar 19, 2020, at 9:31 AM, Idsal, Anne <idsal.anne@epa.gov> wrote:

Thanks for sharing. We actually had discussions on this topic from an OAR standpoint yesterday afternoon, albeit about a different source type. Let's discuss.

---

**From:** Dunn, Alexandra <dunn.alexandra@epa.gov>  
**Sent:** Thursday, March 19, 2020 9:25 AM  
**To:** Bolen, Brittany <bolen.brittany@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Idsal, Anne <idsal.anne@epa.gov>  
**Subject:** RE: Cement Industry Concerns for Coronavirus Pandemic

Happy to discuss as needed.

Alexandra Dapolito Dunn, Esq.  
Assistant Administrator  
Office of Chemical Safety and Pollution Prevention  
US Environmental Protection Agency  
Washington, DC

---

**From:** Bolen, Brittany <bolen.brittany@epa.gov>  
**Sent:** Thursday, March 19, 2020 9:22 AM  
**To:** Bodine, Susan <bodine.susan@epa.gov>; Dunn, Alexandra <dunn.alexandra@epa.gov>; Idsal, Anne <idsal.anne@epa.gov>  
**Subject:** FW: Cement Industry Concerns for Coronavirus Pandemic

FYI –

---

**From:** Louis Baer <lbaer@cement.org>  
**Sent:** Wednesday, March 18, 2020 12:28 PM  
**To:** Bolen, Brittany <bolen.brittany@epa.gov>  
**Cc:** Shaw, Nena <Shaw.Nena@epa.gov>; Sharpe, Kristinn <Sharpe.Kristinn@epa.gov>; Sachs, Robert <Sachs.Robert@epa.gov>; Charles Franklin <cfranklin@cement.org>; Sean O'Neill <soneill@cement.org>  
**Subject:** Cement Industry Concerns for Coronavirus Pandemic

Brittany,

I hope you are doing well and staying safe in these uncertain times. We spoke with Nena, Kristinn, and Bob yesterday and they urged us to reach out to you about concerns we are hearing from our members resulting from the extraordinary health and safety precautions our members' facilities, contractors, and suppliers are taking to prevent the spread of the coronavirus.

In particular, our members are expressing concerns about their ability to comply with testing and reporting requirements across all environmental media. Many members are not able to bring in outside contractors needed to conduct quarterly, semi-annual, and annual testing, such as RATAs and stack tests, due to travel restrictions, social distancing, or quarantine requirements. In addition, with many employees working from home and places that may go into lockdown, it will become increasingly difficult to comply with reporting requirements, including greenhouse gas and Toxics Release Inventory reporting for the time being. Finally, our members have expressed concerns about the potential health, staff, and resource impacts associated with accommodating inspectors during this period of national emergency.

While many of these requirements are contained in state-level plant operating permits, EPA has a crucial role to play through the guidance it provides states and EPA regions allowing and authorizing compliance flexibility and enforcement discretion. We urge EPA to work with our members and other industry stakeholders to identify emergency guidance that will address these and other health, resource, and compliance issues needed to maintain continued operations at our plants and facilities. We are seeking feedback from members on more specific regulatory compliance items where emergency guidance would potentially be needed.

We would welcome the opportunity to discuss these and other concerns and to explore potential actions to manage these challenges. We are in constant communications with our members to understand their ever changing constraints and challenges and, like you, want to do everything we can to help them work through this evolving crisis.

Our members want to continue operations to the extent possible. We appreciate your support in working with industry and the states to make this possible.

Thank you for your consideration. We look forward to hearing from you.

Best,  
Louis

---

**Please Note New PCA Office Address**

Louis A. Baer, Esq., CPEA  
Director/Assistant Counsel, Government Affairs  
Portland Cement Association  
200 Massachusetts Avenue NW, Suite 200  
Washington, DC 20001  
Office: 202-719-1981  
Cell: 314-922-8041  
[lbaer@cement.org](mailto:lbaer@cement.org)  
[www.cement.org](http://www.cement.org)

**To:** Jones, Danielle Y. EOP/OMB [Ex. 6 Personal Privacy (PP)]  
**Cc:** Hirsch, Quinn N. EOP/OMB [Ex. 6 Personal Privacy (PP)]; Joyce, Shannon M. EOP/OMB [Ex. 6 Personal Privacy (PP)]; Leopold, Matt (OGC)[Leopold.Matt@epa.gov]; Bolen, Brittany[bolen.brittany@epa.gov]  
**From:** Bodine, Susan[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8C2CC6086FCC44C3BE6B5D32B262D983-BODINE, SUS]  
**Sent:** Thur 3/26/2020 4:33:29 PM (UTC)  
**Subject:** RE: OECA COVID 19 Policy Review  
COVID-19 Implications for EPA's Enforcement and Compliance Assurance Program (Unsigned).docx

For final clearance. Ready to sign.

If you need to talk to me call [Ex. 6 Personal Privacy (PP)]

---

**From:** Jones, Danielle Y. EOP/OMB [Ex. 6 Personal Privacy (PP)]  
**Sent:** Thursday, March 26, 2020 10:24 AM  
**To:** Bodine, Susan <bodine.susan@epa.gov>  
**Cc:** Hirsch, Quinn N. EOP/OMB [Ex. 6 Personal Privacy (PP)]; Joyce, Shannon M. EOP/OMB [Ex. 6 Personal Privacy (PP)]  
**Subject:** OECA COVID 19 Policy Review

Good morning Susan,

I hope this email finds you well. And on behalf of the EOP, thank you for the opportunity to review.

Attached are the interagency comments and edits on OECA's COVID19 guidance.

We should be able to clear quickly, contingent upon receiving a clean draft and, if applicable, a link to where it is posted.

Thank you again for sharing your guidance and please let me know if you have any questions.

All the best,  
Danielle

Danielle Y. Jones  
Senior Policy Analyst  
Office of Management and Budget | Office of Information and Regulatory Affairs  
Cell [Ex. 6 Personal Privacy (PP)] Phone: (202) 395-1741 [Ex. 6 Personal Privacy (PP)]

**To:** Idsal, Anne[idsal.anne@epa.gov]; Dunn, Alexandra[dunn.alexandra@epa.gov]; Bolen, Brittany[bolen.brittany@epa.gov]; Leopold, Matt (OGC)[Leopold.Matt@epa.gov]; Wright, Peter[wright.peter@epa.gov]; David P Ross (ross.davidp@epa.gov)[ross.davidp@epa.gov]  
**From:** Bodine, Susan[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8C2CC6086FCC44C3BE6B5D32B262D983-BODINE, SUS]  
**Sent:** Thur 3/19/2020 1:35:00 PM (UTC)  
**Subject:** RE: Cement Industry Concerns for Coronavirus Pandemic

Please look for an invite from my assistant for a call tomorrow (Friday) on requests for flexibility.

I have a call with my staff on this subject today at 3 pm.

We can report back to the Administrator on Monday.

---

**From:** Idsal, Anne <idsal.anne@epa.gov>  
**Sent:** Thursday, March 19, 2020 9:32 AM  
**To:** Dunn, Alexandra <dunn.alexandra@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Leopold, Matt (OGC) <Leopold.Matt@epa.gov>  
**Subject:** RE: Cement Industry Concerns for Coronavirus Pandemic

Thanks for sharing. We actually had discussions on this topic from an OAR standpoint yesterday afternoon, albeit about a different source type. Let's discuss.

---

**From:** Dunn, Alexandra <dunn.alexandra@epa.gov>  
**Sent:** Thursday, March 19, 2020 9:25 AM  
**To:** Bolen, Brittany <bolen.brittany@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Idsal, Anne <idsal.anne@epa.gov>  
**Subject:** RE: Cement Industry Concerns for Coronavirus Pandemic

Happy to discuss as needed.

Alexandra Dapolito Dunn, Esq.  
Assistant Administrator  
Office of Chemical Safety and Pollution Prevention  
US Environmental Protection Agency  
Washington, DC

---

**From:** Bolen, Brittany <bolen.brittany@epa.gov>  
**Sent:** Thursday, March 19, 2020 9:22 AM  
**To:** Bodine, Susan <bodine.susan@epa.gov>; Dunn, Alexandra <dunn.alexandra@epa.gov>; Idsal, Anne <idsal.anne@epa.gov>  
**Subject:** FW: Cement Industry Concerns for Coronavirus Pandemic

FYI –

---

**From:** Louis Baer <lbaer@cement.org>  
**Sent:** Wednesday, March 18, 2020 12:28 PM  
**To:** Bolen, Brittany <bolen.brittany@epa.gov>  
**Cc:** Shaw, Nena <Shaw.Nena@epa.gov>; Sharpe, Kristinn <Sharpe.Kristinn@epa.gov>; Sachs, Robert <Sachs.Robert@epa.gov>; Charles Franklin <cfranklin@cement.org>; Sean O'Neill <soneill@cement.org>  
**Subject:** Cement Industry Concerns for Coronavirus Pandemic

Brittany,

I hope you are doing well and staying safe in these uncertain times. We spoke with Nena, Kristinn, and Bob yesterday and they urged us to reach out to you about concerns we are hearing from our members resulting from the extraordinary health and safety precautions our members' facilities, contractors, and suppliers are taking to prevent the spread of the coronavirus.

In particular, our members are expressing concerns about their ability to comply with testing and reporting requirements across all environmental media. Many members are not able to bring in outside contractors needed to conduct quarterly, semi-annual, and annual testing, such as RATAs and stack tests, due to travel restrictions, social distancing, or quarantine requirements. In addition, with many employees working from home and places that may go into lockdown, it will become increasingly difficult to comply with reporting requirements, including greenhouse gas and Toxics Release Inventory reporting for the time being. Finally, our members have expressed concerns about the potential health, staff, and resource impacts associated with accommodating inspectors during this period of national emergency.

While many of these requirements are contained in state-level plant operating permits, EPA has a crucial role to play through the guidance it provides states and EPA regions allowing and authorizing compliance flexibility and enforcement discretion. We urge EPA to work with our members and other industry stakeholders to identify emergency guidance that will address these and other health, resource, and compliance issues needed to maintain continued operations at our plants and facilities. We are seeking feedback from members on more specific regulatory compliance items where emergency guidance would potentially be needed.

We would welcome the opportunity to discuss these and other concerns and to explore potential actions to manage these challenges. We are in constant communications with our members to understand their ever changing constraints and challenges and, like you, want to do everything we can to help them work through this evolving crisis.

Our members want to continue operations to the extent possible. We appreciate your support in working with industry and the states to make this possible.

Thank you for your consideration. We look forward to hearing from you.

Best,  
Louis

---

**Please Note New PCA Office Address**

Louis A. Baer, Esq., CPEA  
Director/Assistant Counsel, Government Affairs  
Portland Cement Association  
200 Massachusetts Avenue NW, Suite 200  
Washington, DC 20001  
Office: 202-719-1981  
Cell: 314-922-8041  
[lbaer@cement.org](mailto:lbaer@cement.org)  
[www.cement.org](http://www.cement.org)



**To:** Hyman, Alana[Hyman.Alana@epa.gov]  
**Cc:** Molina, Michael[molina.michael@epa.gov]  
**From:** Bodine, Susan[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8C2CC6086FCC44C3BE6B5D32B262D983-BODINE, SUS]  
**Sent:** Tue 3/24/2020 9:54:14 PM (UTC)  
**Subject:** Enforcement Update  
[OECA Weekly Briefing \(March 24 2020\).docx](#)

Alana,

Attached is an enforcement update for the Administrator. I would like no more than 15 minutes to discuss the first item with him.

Thanks,

Susan

**To:** Cook, Steven[cook.steven@epa.gov]  
**From:** Bodine, Susan[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8C2CC6086FCC44C3BE6B5D32B262D983-BODINE, SUS]  
**Sent:** Sun 3/22/2020 3:41:07 PM (UTC)  
**Subject:** FW: DRAFT COVID-19 message DELIBERATIVE ENFORCEMENT CONFIDENTIAL  
[COVID19 message 03 22 20 .docx](#)  
[Guidance on the Essential Critical Infrastructure Workforce CISA.pdf](#)  
[EPA Letter 3.20.20.pdf](#)

Draft under review.

**From:** Bodine, Susan  
**Sent:** Sunday, March 22, 2020 11:31 AM  
**To:** Benevento, Douglas <benevento.douglas@epa.gov>; Dunn, Alexandra <dunn.alexandra@epa.gov>; Idsal, Anne <idsal.anne@epa.gov>; Leopold, Matt (OGC) <Leopold.Matt@epa.gov>; McIntosh, Chad <mcintosh.chad@epa.gov>; Ross, David P <ross.davidp@epa.gov>; Wright, Peter <wright.peter@epa.gov>; Gunasekara, Mandy <gunasekara.Mandy@epa.gov>; Sopkin, Gregory <sopkin.gregory@epa.gov>; Dunlap, David <dunlap.david@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>  
**Cc:** Irving, John <Irving.John@epa.gov>; Doyle, Brett <doyle.brett@epa.gov>; Brazauskas, Joseph <brazauskas.joseph@epa.gov>; Garvey, Megan <garvey.megan@epa.gov>; Sethuraman, Jag <Sethuraman.Jag@epa.gov>; Molina, Michael <molina.michael@epa.gov>  
**Subject:** DRAFT COVID-19 message DELIBERATIVE ENFORCEMENT CONFIDENTIAL  
**Importance:** High

AAs et al,



Thanks for your input.

Susan

**To:** Shiffman, Cari[Shiffman.Cari@epa.gov]  
**From:** Bodine, Susan[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8C2CC6086FCC44C3BE6B5D32B262D983-BODINE, SUS]  
**Sent:** Wed 3/25/2020 7:39:18 PM (UTC)  
**Subject:** FW: ACC letter  
[ACC on Enforcement Discretion-March 20.pdf](#)

---

**From:** Bolen, Brittany <bolen.brittany@epa.gov>  
**Sent:** Wednesday, March 25, 2020 12:40 PM  
**To:** Bodine, Susan <bodine.susan@epa.gov>  
**Subject:** FW: ACC letter

---

**From:** [Dimitri.Karakitsos@hklaw.com](mailto:Dimitri.Karakitsos@hklaw.com) <[Dimitri.Karakitsos@hklaw.com](mailto:Dimitri.Karakitsos@hklaw.com)>  
**Sent:** Wednesday, March 25, 2020 12:12 PM  
**To:** Bolen, Brittany <[bolen.brittany@epa.gov](mailto:bolen.brittany@epa.gov)>  
**Subject:** ACC letter

Hope you are staying safe and sane!

**Dimitrios Karakitsos | Holland & Knight**

Partner

Holland & Knight LLP

800 17th Street N.W., Suite 1100 | Washington, District of Columbia 20006

Phone 202.469.5132 | Fax 202.955.5564

[dimitri.karakitsos@hklaw.com](mailto:dimitri.karakitsos@hklaw.com) | [www.hklaw.com](http://www.hklaw.com)

---

[Add to address book](#) | [View professional biography](#)

---

NOTE: This e-mail is from a law firm, Holland & Knight LLP ("H&K"), and is intended solely for the use of the individual(s) to whom it is addressed. If you believe you received this e-mail in error, please notify the sender immediately, delete the e-mail from your computer and do not copy or disclose it to anyone else. If you are not an existing client of H&K, do not construe anything in this e-mail to make you a client unless it contains a specific statement to that effect and do not disclose anything to H&K in reply that you expect it to hold in confidence. If you properly received this e-mail as a client, co-counsel or retained expert of H&K, you should maintain its contents in confidence in order to preserve the attorney-client or work product privilege that may be available to protect confidentiality.

**To:** Shiffman, Cari[Shiffman.Cari@epa.gov]  
**From:** Bodine, Susan[O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8C2CC6086FCC44C3BE6B5D32B262D983-BODINE, SUS]  
**Sent:** Tue 3/24/2020 7:06:22 PM (UTC)  
**Subject:** FW: Letters to White House and EPA Seeking Enforcement Guidance in Response to COVID-19 Crisis  
[PCA POTUS FINAL.pdf](#)  
[PCA OECA Coronavirus Response 03202020 Final Signed.pdf](#)

---

**From:** Louis Baer <lbaer@cement.org>  
**Sent:** Tuesday, March 24, 2020 2:59 PM  
**To:** Wheeler, Andrew <wheeler.andrew@epa.gov>  
**Cc:** Hyman, Alana <Hyman.Alana@epa.gov>; Shaw, Nena <Shaw.Nena@epa.gov>; Sharpe, Kristinn <Sharpe.Kristinn@epa.gov>; Sachs, Robert <Sachs.Robert@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>; Charles Franklin <cfranklin@cement.org>; Sean O'Neill <soneill@cement.org>  
**Subject:** Letters to White House and EPA Seeking Enforcement Guidance in Response to COVID-19 Crisis

Administrator Wheeler,

As you can imagine our members and our team here at PCA have been very engaged in trying to navigate the circumstances our industry is experiencing as a result of COVID-19. We really appreciate the open lines of communication between PCA and your staff at EPA as our members face difficult compliance issues due to travel restrictions, social distancing, mandatory quarantines, and other COVID-19 containment methods. Last Friday, we submitted a letter to the Office of Enforcement & Compliance Assurance and Office of Policy outlining compliance issues directly impacted and seeking enforcement guidance from EPA. We also included our concerns in a letter from our CEO to President Trump. For your reference, I am also attaching our communications with President Trump and our letter last week to EPA. We very much appreciate all the hard work being done by you and your staff at EPA. PCA and our members look forward to working with you on working through these compliance issues in the coming weeks.

Best,  
Louis Baer

---

**Please Note New PCA Office Address**  
Louis A. Baer, Esq., CPEA  
Director/Assistant Counsel, Government Affairs  
Portland Cement Association  
200 Massachusetts Avenue NW, Suite 200  
Washington, DC 20001  
Office: 202-719-1981  
Cell: 314-922-8041  
[lbaer@cement.org](mailto:lbaer@cement.org)  
[www.cement.org](http://www.cement.org)

**To:** Sopkin, Gregory[sopkin.gregory@epa.gov]  
**From:** Bodine, Susan[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8C2CC6086FCC44C3BE6B5D32B262D983-BODINE, SUS]  
**Sent:** Wed 3/25/2020 7:35:35 PM (UTC)  
**Subject:** RE: Final draft ready for WH review.

Ex. 5 Deliberative Process (DP)

**From:** Sopkin, Gregory <sopkin.gregory@epa.gov>  
**Sent:** Wednesday, March 25, 2020 3:11 PM  
**To:** Bodine, Susan <bodine.susan@epa.gov>  
**Subject:** RE: Final draft ready for WH review.

Thank you Susan. Once it is final and cleared, please let me know when the RAs can send it out to their states.

Best regards,

Greg Sopkin

**From:** Bodine, Susan <bodine.susan@epa.gov>  
**Sent:** Wednesday, March 25, 2020 1:02 PM  
**To:** Leopold, Matt (OGC) <Leopold.Matt@epa.gov>; Schiermeyer, Corry <schiermeyer.corry@epa.gov>  
**Cc:** Benevento, Douglas <benevento.douglas@epa.gov>; Molina, Michael <molina.michael@epa.gov>; **Ex. 6 Personal Privacy (PP)**  
**Ex. 6 Personal Privacy (PP)** >; Ross, David P <ross.davidp@epa.gov>; Dunn, Alexandra <dunn.alexandra@epa.gov>; Wright, Peter <wright.peter@epa.gov>; Dunlap, David <dunlap.david@epa.gov>; Idsal, Anne <idsal.anne@epa.gov>; McIntosh, Chad <mcintosh.chad@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>; Irving, John <Irving.John@epa.gov>; Gunasekara, Mandy <gunasekara.Mandy@epa.gov>; Sopkin, Gregory <sopkin.gregory@epa.gov>  
**Subject:** Final draft ready for WH review.

All,

Attached is the final draft enforcement discretion policy.

Matt can you send it to WH counsel’s office?

Corry can you coordinate with your contacts?

Thanks for all your help.

Susan

Susan Parker Bodine  
Assistant Administrator  
Office of Enforcement and Compliance Assurance  
202-564-2440

This message is CONFIDENTIAL, and may contain legally privileged information. If you are not the intended recipient, or believe you received this communication in error, please delete it immediately, do not copy, and notify the sender. Thank you.

**To:** Bolen, Brittany[bolen.brittany@epa.gov]; Leopold, Matt (OGC)[Leopold.Matt@epa.gov]  
**From:** Bodine, Susan[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8C2CC6086FCC44C3BE6B5D32B262D983-BODINE, SUS]  
**Sent:** Thur 3/26/2020 3:12:03 PM (UTC)  
**Subject:** final  
[COVID19 Policy Final .docx](#)

Sending to my staff for a final formatting check then I will sign.

**To:** Kelley, Rosemarie[Kelley.Rosemarie@epa.gov]; Starfield, Lawrence[Starfield.Lawrence@epa.gov]; Irving, John[Irving.John@epa.gov]; Hindin, David[Hindin.David@epa.gov]; Johnson, Kathleen[Johnson.Kathleen@epa.gov]  
**Cc:** Shiffman, Cari[Shiffman.Cari@epa.gov]; Mirza, Sabah[Mirza.Sabah@epa.gov]; Tran, Victoria[tran.victoria@epa.gov]  
**From:** Bodine, Susan[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8C2CC6086FCC44C3BE6B5D32B262D983-BODINE, SUS]  
**Sent:** Thur 3/19/2020 1:27:23 PM (UTC)  
**Subject:** FW: COVID-19 and Livestock Facilities

#3

---

**From:** Michael Formica <formicam@nppc.org>  
**Sent:** Saturday, March 14, 2020 10:32 AM  
**To:** Bodine, Susan <bodine.susan@epa.gov>  
**Subject:** COVID-19 and Livestock Facilities

Susan

Hope this email finds you doing well. Was wondering if you had time for a quick call about a potential issues related to the ongoing Coronavirus emergency and livestock farms.

Thanks

*Michael C. Formica*  
Assistant Vice President & Legal Counsel, Domestic Policy  
National Pork Producers Council  
202.680.3820

**To:** Kelley, Rosemarie[Kelley.Rosemarie@epa.gov]; Irving, John[Irving.John@epa.gov]; Starfield, Lawrence[Starfield.Lawrence@epa.gov]; Hindin, David[Hindin.David@epa.gov]; Johnson, Kathleen[Johnson.Kathleen@epa.gov]  
**Cc:** Shiffman, Cari[Shiffman.Cari@epa.gov]; Mirza, Sabah[Mirza.Sabah@epa.gov]; Tran, Victoria[tran.victoria@epa.gov]  
**From:** Bodine, Susan[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8C2CC6086FCC44C3BE6B5D32B262D983-BODINE, SUS]  
**Sent:** Thur 3/19/2020 1:26:34 PM (UTC)  
**Subject:** FW: COVID-19 Response

#2

**From:** Andy O'Hare <aohare@tfi.org>  
**Sent:** Wednesday, March 18, 2020 3:41 PM  
**To:** Bodine, Susan <bodine.susan@epa.gov>  
**Subject:** COVID-19 Response

Susan,

Good afternoon. I hope this finds you well.

I am writing to pose a question shared with me by one of my members. They wondered whether EPA has formally issued any communications related to environmental law enforcement during the pandemic response. As issue is limited staff at many locations, making the filing of, for example, routine emission reports, much more challenging. Do you believe EPA will exercise some enforcement discretion during this difficult period? If so, what form will that take?

(I presume that EPA itself is facing the same limitations on staff availability and movement as the private sector).

Regards,  
Andy

Andrew (Andy) T. O'Hare, CAE  
Vice President, Public Policy  
The Fertilizer Institute  
425 Third Street, SW  
Suite 950  
Washington, DC 20024  
(202) 515-2704 (office)  
(202) 270-0094 (cell)  
[aohare@tfi.org](mailto:aohare@tfi.org)





brought to you by



MEISTERMEDIA

exclusive media partner

**July 28-30  
2020**  
**Union Station  
St. Louis, MO, USA**



# Arnold & Porter

March 16, 2020

## Emergency Exemptions From Environmental Laws Applicable to the Coronavirus Pandemic

*Coronavirus: Environmental Advisory*

By Michael B. Gerrard, Brian D. Israel

To help our clients navigate the coronavirus (COVID-19) crisis, Arnold & Porter has established a [Coronavirus Task Force](#) covering a wide range of issues and challenges. [Subscribe](#) to our "Coronavirus (COVID-19)" mailing list to receive our latest client Advisories and register for upcoming webinars.

### Introduction

The national response to the coronavirus crisis will face several impediments and obstacles, but federal and state environmental laws should not be among them. Most of these laws have emergency exemptions that allow the usual (and sometimes lengthy) procedures to be bypassed, and some substantive requirements to be waived, in instances of true urgency. Furthermore, nearly all environmental consent decrees include *force majeure* provisions that will excuse performance with compliance obligations under certain circumstances. This Client Alert provides a preliminary review of many of these exemptions and exceptions to ordinary environmental obligations.

### Responding to the National Emergency

It is too early to know all that must be done to cope with this crisis, but some that can be imagined would ordinarily be subject to environmental regulation.

To pick one example that is already apparent, if some of the more dire predictions of the virus's spread come true, the nation's supply of hospital beds will be overwhelmed, and it will be necessary to build many new medical treatment facilities. If this was to be done with federal money, it could ordinarily be deemed to be a major federal action (or perhaps many actions—one for each facility) requiring impact assessments and possibly environmental impact statements (EISs) under the National Environmental Policy Act (NEPA).

However, President Trump's declaration of a national emergency on March 13 invoked the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act). In addition to giving many powers to the Federal Emergency Management Agency, the Stafford Act provides an exemption from NEPA for immediate response actions. 42 U.S.C. 5159, 44 C.F.R. 10.8.

Many of these facilities might be built in existing hospital parking lots or other open land. However, it is possible that some will require demolishing existing buildings. The Stafford Act also gives the President the authority to clear debris and wreckage resulting from major disasters. 42 U.S.C. 5173(a).

The text of NEPA contains no emergency exemptions. However, the implementing regulations of the Council on Environmental Quality authorize lead agencies to make "alternative arrangements" in emergency situations. 40 C.F.R. 1506.11. For disasters and other emergencies abroad, Executive Order 12114 (Environmental Effects Abroad of Major Federal Actions) provides (in section 2-5) for exemptions from environmental review requirements for relief action.

Additionally, after the terrorist attacks of September 11, 2001, the U.S. Environmental Protection Agency (EPA) used its enforcement discretion and issued "no action assurances" to allow certain actions that would otherwise violate the Clean Air Act.

This included, for example, rules regarding vapor recovery at gasoline pumps and certification rules for tank truck carriers.

## State Environmental Exemptions During Emergency Response

Several states have laws comparable to NEPA that govern actions requiring discretionary state or local approvals. These might otherwise require environmental review of new construction, but these, too, tend to have emergency exemptions.

One example is New York's State Environmental Quality Review Act (SEQRA). The regulations under it exempt from the EIS requirement "emergency actions that are immediately necessary on a limited and temporary basis for the protection or preservation of life, health, property or natural resources, provided that such actions are directly related to the emergency and are performed to cause the least change or disturbance, practicable under the circumstances, to the environment." 6 N.Y.C.R.R. 617.5(c)(42). The courts have interpreted this provision broadly to encompass events that at first glance do not look much like emergencies (such as prison overcrowding and homelessness), but obviously the response to the coronavirus would qualify.

New York, like many states, have laws that provide for broad exemptions from a wide variety of laws in the event of emergency. For example, New York State Exec. L. Art. 2-B 29-a provides that:

[s]ubject to the state constitution, the federal constitution and federal statutes and regulations, the governor may by executive order temporarily suspend any statute, local law, ordinance, or orders, rules or regulations, or parts thereof, of any agency during a state disaster emergency, if compliance with such provisions would prevent, hinder, or delay action necessary to cope with the disaster.

After the destruction of the World Trade Center on September 11, 2001, Governor George Pataki used this law on September 12, 2001, to suspend many statutes of limitations, and on October 9, 2001, he used this same law to suspend certain regulations regarding transportation and handling of solid wastes, so as to facilitate the World Trade Center removal operation. It became clear, however, that the SEQRA process was about to delay the start of replacement of one of the buildings that had collapsed, 7 World Trade Center. This was a serious matter because that building had been built atop a Consolidated Edison Co. electrical substation that provided electricity to much of Lower Manhattan. Until that substation could be rebuilt, electricity service was provided through a jerry-rigged system of cables running on the surface of the streets. This was an intrinsically unstable situation. Thus the state invoked SEQRA's emergency provision and allowed site preparation activities to go forward before the completion of the SEQRA process. Ultimately the state decided that no EIS was necessary, as the new 7 World Trade Center, though taller than the original, had less square footage and therefore it generated less traffic and sewage, used less water and energy, and otherwise had fewer impacts. Thus, SEQRA did not delay the reconstruction of 7 World Trade Center.

Other states have similar exemptions for environmental reviews during emergencies. For example, the California Environmental Quality Act (CEQA) exempts from the environmental impact report (EIR) requirement "[e]mergency repairs to public service facilities necessary to maintain service" as well as "[s]pecific actions necessary to prevent or mitigate an emergency." Cal. Pub. Res. Code 21080(b)(2), (4). CEQA defines an emergency as a "sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services." *Id.* 21060.3. The CEQA guidelines elaborate that "emergency projects . . . exempt from the requirements of CEQA" include "[e]mergency repairs to publicly or privately owned service facilities necessary to maintain service essential to the public health, safety or welfare" including "those that require a reasonable amount of planning to address an anticipated emergency." 14 Cal. Code Reg. 15269(b). As in New York, California state courts have interpreted the emergency exemptions broadly to encompass events that at first glance do not seem like emergencies (such as prison overcrowding and beach erosion), but the response to the coronavirus would clearly qualify.

The Massachusetts Environmental Policy Act (MEPA) provides for a more limited emergency exemption in the "rare case[s]" when it is "essential to avoid or eliminate an imminent threat to environmental resources or quality or public health or safety." 301 Mass. Code Regs. 11.13(1). However, the project proponent must "limit any emergency action taken without prior due compliance with MEPA . . . to the minimum action necessary to avoid or eliminate the imminent threat." *Id.* Additionally, the

proponent must file an initial environmental notification form within 10 days of commencing the action, and the proponent must later file an EIR after the emergency action is taken. *Id.* 11.13(2).

By comparison, the Washington State Environmental Policy Act (SEPA) does not include any relevant statutory or regulatory provisions that would exempt emergency actions. However, the Washington Department of Ecology guidance on SEPA provides that a lead agency can grant an emergency exemption if an action meets two conditions. First, the action must be "needed to avoid an imminent threat to public health or safety," and second, there must not be "adequate time to complete SEPA procedures."<sup>1</sup>

Similarly, after major disasters, states issue many waivers. For example, after Hurricane Katrina in 2005, the Louisiana Department of Environmental Quality granted relief from the rules applicable to wastewater discharges; air emissions relating to repair activities and temporary power sources; on-site solid and hazardous waste management; inspection and rehabilitation of underground storage tanks; and numerous inspection, monitoring, and discharge reporting requirements. Likewise, the state of Texas suspended many environmental regulations after Hurricane Harvey in 2017.

## Environmental Exemptions More Broadly

Besides responding to emergency conditions directly, companies may have difficulty complying with environmental obligations more generally as a result of the global coronavirus pandemic. These challenges may stem from a wide variety of conditions including supply chain disruptions for pollution control equipment; inability of employees to work on site; and prioritization of resources to immediate and critical safety needs. It is important, in these circumstances, for companies to understand the relevant exemptions that may apply and how to trigger these exemptions appropriately.

Emergency exemptions in environmental law fall into two broad categories—the generic and the case-specific. The generic exemptions, in turn, come in four types: exemptions from permitting requirements; relaxation of substantive standards; exemptions from, or acceleration of, certain processes; and releases from liability. The case-specific exemptions are aimed at specific projects or geographic areas. Examples included congressional declarations of non-navigability that shield certain areas from Corps of Engineers permitting requirements, and congressional and state legislative declarations that certain projects need not go through the standard environmental review process.

Few of these exemptions are self-executing. Most require a declaration or finding of the President (which has just been issued) or the administrator of EPA (either acting on his or her own authority, or under a delegation from the President) or of another high federal official. In the absence of such a federal action, regulated entities generally cannot simply plead that the environmental laws do not apply to them. A notable exception is the act of God or war defense that is found in most of the federal statutes that confer environmental liability.

The National Historic Preservation Act applies to a broad array of federal actions. The regulations of the Advisory Council on Historic Preservation provide for emergency procedures. 36 C.F.R. 78.3(a).

Most of the substantive environmental laws and their implementing regulations contain emergency exemptions of various sorts. Many of them have been used after disasters like hurricanes and earthquakes.

Under the Clean Air Act, the available waivers include:

- from national emission standards for hazardous air pollutants from stationary sources when in the interests of national security, 42 U.S.C. 7412(i)(4);
- for federal emission sources where "in the paramount interest of the United States," 42 U.S.C. 7418(b);
- from certain of the requirements under the National Emissions Standards for Hazardous Air Pollutants for the demolition of asbestos-containing buildings, when the building has been ordered torn down because it "is structurally unsound and in danger of imminent collapse," 40 C.F.R. 61.145(a)(3); and

- for federal procurement when in the paramount national interest, 42 U.S.C. 7606(d).

The Clean Water Act and its regulations have several exemptions. Among them are:

- acts of God or war, 33 U.S.C. 1321(a)(12);
- emergencies that require expedited procedures for the processing of permit applications by the Corps of Engineers, 33 C.F.R. 325.2(e)(4);
- emergencies requiring expedited direct action by the Corps of Engineers, 33 C.F.R. 337.7; and
- exigent discharges of oil and hazardous substances, 33 U.S.C. 1321(c)(2), 40 C.F.R. 122.3(d).

The Comprehensive Environmental Response, Compensation, and Liability Act also has an act of God or war defense. 42 U.S.C. 9607(b)(1), (2). Additionally, it allows emergency removal actions, 42 U.S.C. 9604(a), 40 C.F.R. 300.400.

The Coastal Zone Management Act allows the President to authorize federal actions that are inconsistent with state coastal plans if the President finds it is in the paramount interest of the country, or the Secretary of Commerce determines it is a matter of national security. 16 U.S.C. 1456(c)(1)(B).

The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) requires that products used to disinfect inanimate objects are registered by EPA (all of the states have similar requirements). FIFRA permits EPA to exempt federal and state agencies from certain requirements of the statute (including product registration requirements) if EPA determines that emergency conditions exist that require such exemption. 7 U.S.C. 136p, 40 C.F.R. pt. 166. On March 13, 2020, EPA announced that it had used expedited procedures under FIFRA to expand the list of previously-approved general use disinfectant products for use specifically in combating the coronavirus.

The Resource Conservation and Recovery Act allows the President to determine it to be in the "paramount interest" of the nation to exempt any federal solid waste management facility. 42 U.S.C. 6961(a). This authority also extends to federal underground storage tanks. 42 U.S.C. 6991f(a). EPA may issue temporary emergency permits to allow treatment, storage, or disposal of hazardous wastes where there is imminent and substantial endangerment to human health or the environment. 40 C.F.R. 270.61(a). The standards applicable to treatment, storage, and disposal facilities may also give way in time of emergency. 40 C.F.R. 264.1(g)(8).

The Safe Drinking Water Act allows states to exempt public water supply systems from maximum contaminant levels due to "compelling factors," including "[u]rgent threats to public health." 42 U.S.C. 300g-5, 300g-1.

Even where there is no explicit exemption, the environmental authorities have generally made it clear that they will take no enforcement action against actions that could impede the immediate response to a major disaster.

## Consent Decree Obligations

Companies often have specific environmental obligations—including pollution control measures, reporting, environmental mitigation, and other requirements—incorporated as part of a consent decree or other agreement with federal or state governmental agencies. In most such agreements, a company may be excused of its obligation (for a period of time) if the delay is caused by a *force majeure* event. As discussed above, there may be circumstances caused by the coronavirus pandemic or the declared national emergency that constitute a *force majeure* event, including, for example, a true inability to obtain necessary equipment or supplies. However, it is critical that companies understand the specific *force majeure* definitions and procedures applicable to their environmental obligations.

For purposes of most consent decrees with EPA, a *force majeure* event is defined as "any event arising from causes beyond the control of [the settling defendants], of any entity controlled by [settling defendants], or of [settling defendants'] contractors that delays or prevents the performance of any obligation under [the consent decree] despite [settling defendants'] best efforts to

fulfill the obligation."<sup>2</sup> Almost all EPA consent decrees further provide that a "financial inability" to perform will not constitute a *force majeure* event.<sup>3</sup>

Finally, it is important that companies familiarize themselves with the procedures of invoking a *force majeure* exception to their consent decree obligations. Most *force majeure* provisions have very strict deadlines by which they must notify EPA of the event that might cause a delay. Often, a company must report the circumstances orally or electronically to EPA within 72 hours, sometimes even less. EPA also frequently requires rapid follow-up in writing with specific information including:

- an explanation and description of the reasons for the delay;
- the anticipated duration of the delay;
- all actions taken or to be taken to prevent or minimize the delay;
- a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay;
- the rationale for attributing such delay to a *force majeure*; and
- a statement as to whether such event may cause or contribute to an endangerment to public health or welfare, or the environment.<sup>4</sup>

## Conclusion

The national emergency caused by the global coronavirus pandemic will cause unprecedented response actions and likely result in significant disruptions throughout our economy. Fortunately, environmental obligations are often sufficiently flexible to facilitate necessary response actions and to excuse, where appropriate, certain delays in environmental compliance. As discussed above, most federal and state environmental laws have emergency exemptions that allow the usual environmental review procedures to be bypassed, and some substantive requirements to be waived, in instances of true urgency. Furthermore, nearly all environmental consent decrees include *force majeure* provisions that will allow for a delay of compliance obligations under certain circumstances. Of course, the application of these exceptions will vary depending upon the specific circumstances, and thus a careful review of those circumstances is a critical next step.

\* \* \* \* \*

**Michael B. Gerrard** is a professor and Faculty Director of the Sabin Center for Climate Change Law at Columbia Law School, and Senior Counsel in the New York office of Arnold & Porter.

**Brian D. Israel**, a partner in Arnold & Porter's Washington, DC, office, is chair of the firm's Environmental practice group.

*Francesa Bochner-Brown contributed to this Advisory. Ms. Bochner-Brown is a graduate of Duke University School of Law and is employed at Arnold & Porter's Washington, DC office. Ms. Bochner-Brown is admitted only in California. She is not admitted to the practice of law in the District of Columbia.*

Arnold & Porter Kaye Scholer LLP 2020 All Rights Reserved. This Advisory is intended to be a general summary of the law and does not constitute legal advice. You should consult with counsel to determine applicable legal requirements in a specific fact situation.

Wash. State Dep't of Ecology, *State Environmental Policy Act Handbook: 2018 Updates* at 15 (2018).

See, e.g., EPA, *Model Remedial Design/Remedial Action Consent Decree* at Section XIII (Aug. 2019).

*Id.*

*Id.*

---

SHARE THIS WITH OTHERS: [!\[\]\(d0a1791f26d167e866e44ebbf83efebe\_img.jpg\)](#) [!\[\]\(cb1960474df5b19cdeae2009c7323e63\_img.jpg\)](#) [!\[\]\(d08b0fd4d750d53eedcbf354f1702398\_img.jpg\)](#) [!\[\]\(bf750dd6dafb1c24695334b03f7e5ab3\_img.jpg\)](#)

---

*Find more content tagged:*

ENVIRONMENTAL

ENVIRONMENTAL AND INDUSTRIAL CRISIS MANAGEMENT

LEGISLATIVE AND PUBLIC POLICY

## RELATED SERVICES

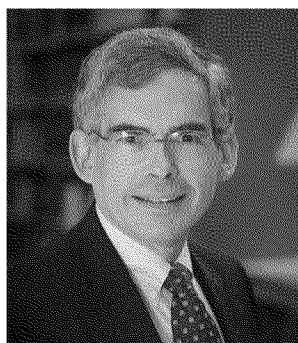
Environmental

Environmental and Industrial Crisis Management

Legislative and Public Policy

 SUBSCRIBE

## People

**Michael B. Gerrard***Senior Counsel*

New York

+1 212.836.7387

michael.gerrard@arnoldporter.com

VCard

**Brian D. Israel***Partner*

Washington, DC

+1 202.942.6546

brian.israel@arnoldporter.com

VCard

**Related Articles**

- March 17, 2020  
**Disinfecting for COVID-19: The Role of the US Environmental Protection Agency**  
*Coronavirus: Consumer Products and Environmental Advisory*
- March 12, 2020  
**Governor Cuomo Proposes \$3 Billion 'Restore Mother Nature' Bond Act**  
*New York Law Journal, Vol. 263, No. 48*
- March 9, 2020  
**Treat Climate Change as a Systematic Risk to Global Finance**  
*Financial Times*

**To:** Kelley, Rosemarie[Kelley.Rosemarie@epa.gov]; Starfield, Lawrence[Starfield.Lawrence@epa.gov]; Irving, John[Irving.John@epa.gov]; Johnson, Kathleen[Johnson.Kathleen@epa.gov]; Hindin, David[Hindin.David@epa.gov]  
**Cc:** Shiffman, Cari[Shiffman.Cari@epa.gov]; Mirza, Sabah[Mirza.Sabah@epa.gov]; Tran, Victoria[tran.victoria@epa.gov]  
**From:** Bodine, Susan[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8C2CC6086FCC44C3BE6B5D32B262D983-BODINE, SUS]  
**Sent:** Thur 3/19/2020 1:24:08 PM (UTC)  
**Subject:** FW: Cement Industry Concerns for Coronavirus Pandemic

Sending you some inquiries that have come in.

---

**From:** Bolen, Brittany <bolen.brittany@epa.gov>  
**Sent:** Thursday, March 19, 2020 9:22 AM  
**To:** Bodine, Susan <bodine.susan@epa.gov>; Dunn, Alexandra <dunn.alexandra@epa.gov>; Idsal, Anne <idsal.anne@epa.gov>  
**Subject:** FW: Cement Industry Concerns for Coronavirus Pandemic

FYI –

---

**From:** Louis Baer <lbaer@cement.org>  
**Sent:** Wednesday, March 18, 2020 12:28 PM  
**To:** Bolen, Brittany <bolen.brittany@epa.gov>  
**Cc:** Shaw, Nena <Shaw.Nena@epa.gov>; Sharpe, Kristinn <Sharpe.Kristinn@epa.gov>; Sachs, Robert <Sachs.Robert@epa.gov>; Charles Franklin <cfranklin@cement.org>; Sean O'Neill <soneill@cement.org>  
**Subject:** Cement Industry Concerns for Coronavirus Pandemic

Brittany,

I hope you are doing well and staying safe in these uncertain times. We spoke with Nena, Kristinn, and Bob yesterday and they urged us to reach out to you about concerns we are hearing from our members resulting from the extraordinary health and safety precautions our members' facilities, contractors, and suppliers are taking to prevent the spread of the coronavirus.

In particular, our members are expressing concerns about their ability to comply with testing and reporting requirements across all environmental media. Many members are not able to bring in outside contractors needed to conduct quarterly, semi-annual, and annual testing, such as RATAs and stack tests, due to travel restrictions, social distancing, or quarantine requirements. In addition, with many employees working from home and places that may go into lockdown, it will become increasingly difficult to comply with reporting requirements, including greenhouse gas and Toxics Release Inventory reporting for the time being. Finally, our members have expressed concerns about the potential health, staff, and resource impacts associated with accommodating inspectors during this period of national emergency.

While many of these requirements are contained in state-level plant operating permits, EPA has a crucial role to play through the guidance it provides states and EPA regions allowing and authorizing compliance flexibility and enforcement discretion. We urge EPA to work with our members and other industry stakeholders to identify emergency guidance that will address these and other health, resource, and compliance issues needed to maintain continued operations at our plants and facilities. We are seeking feedback from members on more specific regulatory compliance items where emergency guidance would potentially be needed.

We would welcome the opportunity to discuss these and other concerns and to explore potential actions to manage these challenges. We are in constant communications with our members to understand their ever changing constraints and challenges and, like you, want to do everything we can to help them work through this evolving crisis.

Our members want to continue operations to the extent possible. We appreciate your support in working with industry and the states to make this possible.

Thank you for your consideration. We look forward to hearing from you.

Best,  
Louis



**Please Note New PCA Office Address**

Louis A. Baer, Esq., CPEA  
Director/Assistant Counsel, Government Affairs  
Portland Cement Association  
200 Massachusetts Avenue NW, Suite 200  
Washington, DC 20001  
Office: 202-719-1981  
Cell: 314-922-8041  
[lbaer@cement.org](mailto:lbaer@cement.org)  
[www.cement.org](http://www.cement.org)

**To:** Hindin, David[Hindin.David@epa.gov]; Kelley, Rosemarie[Kelley.Rosemarie@epa.gov]; Koslow, Karin[Koslow.Karin@epa.gov]  
**Cc:** Starfield, Lawrence[Starfield.Lawrence@epa.gov]; Irving, John[Irving.John@epa.gov]; Shiffman, Cari[Shiffman.Cari@epa.gov]; Mirza, Sabah[Mirza.Sabah@epa.gov]; Tran, Victoria[tran.victoria@epa.gov]  
**From:** Bodine, Susan[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8C2CC6086FCC44C3BE6B5D32B262D983-BODINE, SUS]  
**Sent:** Wed 3/25/2020 1:41:34 PM (UTC)  
**Subject:** FW: State Questions

More questions

**From:** Benevento, Douglas <benevento.douglas@epa.gov>  
**Sent:** Wednesday, March 25, 2020 9:30 AM  
**To:** Bodine, Susan <bodine.susan@epa.gov>  
**Subject:** FW: State Questions

Hey Susan, I hope you’re well.

Many of these questions will be answered by the document you are currently drafting, but I wanted to send it to you to see if there is anything new that would inform your work. I do have a question about I/M programs, I had not thought of that and don’t know if they are addressed. Of course suspension of an I/M program would generally be a SIP violation, is that covered? In any event I will give you a call to discuss. Thanks Susan.

**From:** Richardson, RobinH <Richardson.RobinH@epa.gov>  
**Sent:** Tuesday, March 24, 2020 5:39 PM  
**To:** Benevento, Douglas <benevento.douglas@epa.gov>  
**Cc:** Carter, Brittany S. <carter.brittanys@epa.gov>; Bowles, Jack <Bowles.Jack@epa.gov>; Saddler, Melissa <Saddler.Melissa@epa.gov>; Barbery, Andrea <Barbery.Andrea@epa.gov>; Garvey, Megan <garvey.megan@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>; Coxen, Carrie <coxen.carrie@epa.gov>  
**Subject:** State Questions

Hi Doug –

I hope you and your family are well. We wanted to flag for you that we’re starting to receive a multitude of questions from the states that run the spectrum. Examples are below from ECOS and R4 States. We are working on an approach with the regions, program offices and OPA on collecting the questions, developing responses, and responding to ensure consistency. We have time with you tomorrow either during our morning Deputy Morning Briefing and/or OCIR Monthly that we hope to get your thoughts on our proposed next steps. Please let us know if you need anything more before we meet.

Thank you! Robin

Example State Questions:  
ECOS Questions:

# Ex. 5 Deliberative Process (DP)

Region 4 States:

# Ex. 5 Deliberative Process (DP)

# Ex. 5 Deliberative Process (DP)

---

Robin H Richardson  
Deputy Associate Administrator  
Office of Congressional and Intergovernmental Relations  
U.S. Environmental Protection Agency  
202-564-3358 (desk)  
Ex. 6 Personal Privacy (PP) (cell)  
[richardson.robinh@epa.gov](mailto:richardson.robinh@epa.gov)



**To:** Alexandra Dunn (dunn.alexandra@epa.gov)[dunn.alexandra@epa.gov]  
**From:** Bodine, Susan[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8C2CC6086FCC44C3BE6B5D32B262D983-BODINE, SUS]  
**Sent:** Fri 3/20/2020 5:54:57 PM (UTC)  
**Subject:** FW: Request for EPA Enforcement Discretion in Certain Compliance Activities  
[ACC on Enforcement Discretion-March 20.pdf](#)

Apparently API has never heard of electronic signatures.

Similarly, export notifications under section 12(b) of the Toxic Substances Control Act must be made within 7 days of forming the intent to export the chemical. Yet corporate policies – again consistent with the guidance provided by public health officials – may limit the ability of corporate employees to travel to obtain necessary signatures certifying compliance, or complete the notices within the timeframe allowed by regulation.

---

**From:** Grabill, Jessica <Jessica\_Grabill@americanchemistry.com> **On Behalf Of** Jahn, Chris  
**Sent:** Friday, March 20, 2020 1:47 PM  
**To:** Wheeler, Andrew <wheeler.andrew@epa.gov>  
**Cc:** Bodine, Susan <bodine.susan@epa.gov>; Dunn, Alexandra <dunn.alexandra@epa.gov>; Leopold, Matt (OGC) <Leopold.Matt@epa.gov>; Ross, David P <ross.davidp@epa.gov>; Idsal, Anne <idsal.anne@epa.gov>; Wright, Peter <wright.peter@epa.gov>  
**Subject:** Request for EPA Enforcement Discretion in Certain Compliance Activities

Dear Mr. Administrator,

As set out in the attached letter, the American Chemistry Council requests that you consider providing enforcement discretion, compliance grace periods, and additional guidance with respect to compliance activities associated with EPA regulatory activities.

Best regards,

Chris Jahn  
President & CEO  
American Chemistry Council

+++++ This message may contain confidential information and is intended only for the individual named. If you are not the named addressee do not disseminate, distribute or copy this email. Please notify the sender immediately by email if you have received this email by mistake and delete this email from your system. E-mail transmission cannot be guaranteed to be secure or error-free as information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete, or contain viruses. The sender therefore does not accept liability for any errors or omissions in the contents of this message which arise as a result of email transmission. American Chemistry Council, 700 – 2nd Street NE, Washington, DC 20002, [www.americanchemistry.com](http://www.americanchemistry.com)

**To:** Leopold, Matt (OGC)[Leopold.Matt@epa.gov]  
**From:** Bodine, Susan[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8C2CC6086FCC44C3BE6B5D32B262D983-BODINE, SUS]  
**Sent:** Mon 3/23/2020 5:01:51 PM (UTC)  
**Subject:** RE: DRAFT COVID-19 message DELIBERATIVE ENFORCEMENT CONFIDENTIAL

thanks

---

**From:** Leopold, Matt (OGC) <Leopold.Matt@epa.gov>  
**Sent:** Monday, March 23, 2020 12:59 PM  
**To:** Bodine, Susan <bodine.susan@epa.gov>  
**Subject:** Fwd: DRAFT COVID-19 message DELIBERATIVE ENFORCEMENT CONFIDENTIAL

Susan, here are OGC comments I've discussed with Jim, including a redline with suggested edits. We may have a couple more, but I wanted to get this to you now.

**To:** Tran, Victoria[tran.victoria@epa.gov]  
**From:** Bodine, Susan[O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8C2CC6086FCC44C3BE6B5D32B262D983-BODINE, SUS]  
**Sent:** Thur 3/19/2020 10:37:51 PM (UTC)  
**Subject:** FW: Additional questions/comments from Smart Sectors partners

Received from OP Sector office

**From:** Bolen, Brittany <bolen.brittany@epa.gov>  
**Sent:** Thursday, March 19, 2020 6:37 PM  
**To:** Bodine, Susan <bodine.susan@epa.gov>  
**Subject:** FW: Additional questions/comments from Smart Sectors partners

FYI

**From:** Shaw, Nena <Shaw.Nena@epa.gov>  
**Sent:** Thursday, March 19, 2020 4:30 PM  
**To:** Bolen, Brittany <bolen.brittany@epa.gov>  
**Cc:** Yarbrough, John (Daniel) <Yarbrough.Daniel@epa.gov>; Wooden-Aguilar, Helena <Wooden-Aguilar.Helena@epa.gov>; Cortes, Emilio <Cortes.Emilio@epa.gov>; Sharpe, Kristinn <Sharpe.Kristinn@epa.gov>; Sachs, Robert <Sachs.Robert@epa.gov>  
**Subject:** Additional questions/comments from Smart Sectors partners

Brittany –

# Ex. 5 Deliberative Process (DP)

# Ex. 5 Deliberative Process (DP)

As always, please let me know if there is anything we can do to help. Tomorrow you will get an update from us on the completion of the snapshots and answers to your questions about Version 2.

Best, Nena

Nena Shaw  
Smart Sectors Program  
Office of Policy, Immediate Office  
U.S. Environmental Protection Agency  
Office: (202) 564-5106  
Mobile: Ex. 6 Personal Privacy (PP)



**Cc:** Starfield, Lawrence[Starfield.Lawrence@epa.gov]; Irving, John[Irving.John@epa.gov]; Hindin, David[Hindin.David@epa.gov]; Kelley, Rosemarie[Kelley.Rosemarie@epa.gov]; Barnet, Henry[Barnet.Henry@epa.gov]  
**To:** Badalamente, Mark[Badalamente.Mark@epa.gov]  
**From:** Bodine, Susan[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8C2CC6086FCC44C3BE6B5D32B262D983-BODINE, SUS]  
**Sent:** Sat 3/14/2020 2:41:19 PM (UTC)  
**Subject:** Re: Travel

Doug will be on a call today

Sent from my iPhone

> On Mar 14, 2020, at 9:16 AM, Badalamente, Mark <Badalamente.Mark@epa.gov> wrote:  
>  
> You've probably seen the news that DOD has placed a halt on all domestic travel. If there is an Agency CoVid19 call this weekend (TDB), I'll ask if we are considering the same or if a broader travel ban was discussed on the inter-agency all, which I think is still happening today or tomorrow.  
>  
> Sent from my iPhone



**To:** Darwin, Henry[darwin.henry@epa.gov]; Idsal, Anne[idsal.anne@epa.gov]  
**From:** Bodine, Susan[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8C2CC6086FCC44C3BE6B5D32B262D983-BODINE, SUS]  
**Sent:** Wed 3/25/2020 12:49:29 AM (UTC)  
**Subject:** RE: Issues facing us all with EPA method 9 testing

Yes, general enforcement discretion to include routine sampling, reporting, and training, and associated certification.  
Trying hard to get it out this week.

---

**From:** Darwin, Henry <darwin.henry@epa.gov>  
**Sent:** Tuesday, March 24, 2020 8:47 PM  
**To:** Bodine, Susan <bodine.susan@epa.gov>; Idsal, Anne <idsal.anne@epa.gov>  
**Subject:** Fwd: Issues facing us all with EPA method 9 testing

Is this something under consideration?

Thanks

Henry

Sent from my iPhone  
Begin forwarded message:

**From:** Aaron LaRoque { Ex. 6 Personal Privacy (PP) }  
**Date:** March 24, 2020 at 5:22:54 PM MST  
**To:** "Darwin, Henry" <darwin.henry@epa.gov>  
**Subject:** Issues facing us all with EPA method 9 testing

Hi Henry,

Hope you are doing well and are staying safe during this time of crisis in our country. The reason I am writing is as you know, we conduct method 9 training every 6 months and we do our sessions every spring and fall. We have delayed our schools for the next two weeks, but we are still getting a lot of phone calls asking us if we are doing the training. Many have called to cancel. It would be much easier on everybody I believe if EPA issued a moratorium on method 9 training requirements for 6 months and allow people who have been certified in the previous 6 months to continue that certification. This would relieve businesses stresses in this time about trying to get people certified, and instead allow them to focus on staying in business. I am sure Fred would not agree with me, so this request is my suggestion. I believe our and everybody's health matters right now more than getting people certified in Method 9.

Take care Henry.

Aaron LaRoque

**To:** Mark Badalamente (Badalamente.Mark@epa.gov)[Badalamente.Mark@epa.gov]; Hindin, David[Hindin.David@epa.gov]; Irving, John[Irving.John@epa.gov]  
**From:** Bodine, Susan[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8C2CC6086FCC44C3BE6B5D32B262D983-BODINE, SUS]  
**Sent:** Tue 3/10/2020 2:57:27 PM (UTC)  
**Subject:** FW: Coronavirus & Force Majeure Notification - Phillips 66 Company (Wood River Refinery, IL)  
[2020.03.09 FM Notify - Wood River Refinery.pdf](#)

Ex. 5 Deliberative Process (DP)

**From:** Nelson, Leverett <nelson.leverett@epa.gov>  
**Sent:** Tuesday, March 10, 2020 10:54 AM  
**To:** Bodine, Susan <bodine.susan@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>  
**Cc:** Harris, Michael <harris.michael@epa.gov>; Thiede, Kurt <thiede.kurt@epa.gov>; Newton, Cheryl <Newton.Cheryl@epa.gov>; Lupton, Jane <lupton.jane@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>  
**Subject:** Coronavirus & Force Majeure Notification - Phillips 66 Company (Wood River Refinery, IL)

Susan/Larry-

Good seeing you in Denver.

Ex. 5 Deliberative Process (DP)

-Rett

**From:** McAuliffe, Mary <mcauliffe.mary@epa.gov>  
**Sent:** Monday, March 09, 2020 2:56 PM  
**To:** Peaceman, Karen <Peaceman.Karen@epa.gov>; Klassman, Debra <klassman.debra@epa.gov>  
**Cc:** Wagner, William <wagner.william@epa.gov>  
**Subject:** FW: Force Majeure Notification - Phillips 66 Company (Wood River Refinery) - Paragraph 129 of Civil Action No. 3.18-cv-01484-SMY-GCS

Ex. 5 Deliberative Process (DP)

**From:** Reed, Pamela F. (LDZX) <Pamela.F.Reed@p66.com>  
**Sent:** Monday, March 9, 2020 2:11 PM  
**To:** r5ardreporting <r5ardreporting@epa.gov>; Loukeris, Constantinos <loukeris.constantinos@epa.gov>; Gehrig, Greg <gehrig.greg@epa.gov>; Wagner, William <wagner.william@epa.gov>; McAuliffe, Mary <mcauliffe.mary@epa.gov>; aarmstrong@atg.state.il.us; rcallery@atg.state.il.us; maureen.wozniak@illinois.gov  
**Cc:** Goedeker, Tim E <Tim.E.Goedeker@p66.com>; Maniatis, Dean P. <Dean.P.Maniatis@p66.com>; Hamada, Paul (LDZX) <Paul.Hamada@p66.com>; Knoyle, Gerald A <Gerald.A.Knoyle@p66.com>  
**Subject:** Force Majeure Notification - Phillips 66 Company (Wood River Refinery) - Paragraph 129 of Civil Action No. 3.18-cv-01484-SMY-GCS

For your review, attached please find the Force Majeure Notification letter concerning the above-referenced matter. The hard copy has been mailed today via UPS overnight delivery.

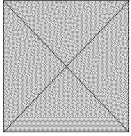
Regards,  
ED\_004611\_00007913-00001

## *Donna Carvalho*

### **Senior Counsel**

O: (+1) 832.765.1214 | F: (+1) 832.765.9875 | [donna.h.carvalho@p66.com](mailto:donna.h.carvalho@p66.com)

HQ-13-N13561 | P. O. Box 421959 | Houston, TX 77242-1959 | Physical Address: 2331 CityWest Blvd. | Houston, TX 77042



CONFIDENTIALITY NOTICE: This e-mail message including attachments, if any, is intended for the person or entity to which it is addressed and may contain confidential and/or privileged material. Any unauthorized review, use, disclosure or distribution is prohibited.